CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 391

ALMA LOVELL, APPELLANT,

vs.

THE CITY OF GRIFFIN

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF GEORGIA

FILED SEPTEMBER 7, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 391

ALMA LOVELL, APPELLANT,

vs.

THE CITY OF GRIFFIN

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF GEORGIA

INDEX.

	Original	Print
Record from Superior Court of Spalding County	1	1
Bill of exceptions and order settling same	1	1
Petition for certiorari	4	2
Proceedings in Recorder's Court of City of Griffin	4	2
Ordinance re distribution of literature	4	3
Demurrer and motion to dismiss	4	3
Judgment	7	6
Testimony of J. T. Wilson	8	6
R. A. Drake	9	7
Assignments of error	9	7
Order refusing sanction of petition	13	9
Exhibit "A"—Statement of defendant	14	9
"B"—Notice of petition for certiorari	20	14
"C"—Bond	21	14
"D"—Certificate of clerk	21-a	15
Judge's certificate (omitted in printing)	22	
Clerk's certificate (omitted in printing)	22	
Proceedings in Court of Appeals of Georgia	24	16
Opinion, MacIntyre, J.	24	16
Judgment	26	17
Motion for rehearing (omitted in printing)	27	
Order denying rehearing (omitted in printing)	34	
Notices of petition for certiorari (omitted in printing)	35	
Order of Supreme Court denying certiorari	37	18
Petition for appeal (omitted in printing)	38	
Order allowing appeal	39	18
Assignments of error	40	19
Supersedeas bond on appeal (omitted in printing)	53	
Citation and service (omitted in printing)	55	
Præcipe for record (omitted in printing)	57	
Clerk's certificate (omitted in printing)	59	
Statement of points to be relied upon and designation as to printing record	60	22

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 8, 1937.
—2610

[fol. 1]

IN SUPERIOR COURT OF SPALDING COUNTY

BILL OF EXCEPTIONS—Filed July 3, 1936; Filed in Court of Appeals July 10, 1936

GEORGIA,
Spalding County:

Be it remembered that on June 29, 1936, there came on to be tried in the Recorder's Court of the City of Griffin the case of the City of Griffin against Alma Lovell, the same being a prosecution for a violation of an ordinance of the City of Griffin which prohibits the distribution of literature of any kind within the limits of the City of Griffin, without the written permission of the City Manager of said City. On the trial of said case the Recorder who was presiding therein found Alma Lovell, the defendant in said case, guilty of a violation of said ordinance and sentenced her to serve fifty days in jail, in default of the payment of a fine of fifty dollars. Within less than thirty days from the date of said sentence, and within the time required by law, the defendant therein, Alma Lovell, presented her petition for certiorari in said case to the Honorable W. E. H. Searcy, Jr., Judge of the Superior Courts of the Griffin Circuit of Georgia, and on July 2, 1936, the said named Judge of the Superior Courts entered up an order on said petition for certiorari refusing to sanction said petition. The original petition for certiorari, with the exhibits and orders thereon, is hereto attached, properly identified by the certificate of the Judge to whom it was presented, and is made a part of this petition.

To this judgment of the court refusing to sanction said petition for certiorari Alma Lovell excepted, now excepts, and assigns error thereon and says that the court erred in refusing to sanction said petition for certiorari on the ground that such judgment and ruling is contrary to law. Said Alma Lovell further assigns error on said ruling for the reason that each and all of the rulings made by the Recorder in said case were erroneous for each and all the reasons set out in the petition for certiorari and the court should have sanctioned said petition for each and all of said reasons.

[fol. 2] Alma Lovell names herself as plaintiff in error in this bill of exceptions and the City of Griffin as defendant in error.

And now, within less than twenty days from the date of the ruling herein complained of, and within the time required by law, plaintiff in error presents this bill of exceptions and prays that the same be certified as required by law, in order that the errors complained of may be considered and corrected by the Court of Appeals of Georgia.

(Signed) John O. Owen, (Signed) Charles G. Reynolds, Attorneys for Plaintiff in Error, Post Office Address: 432 Peachtree Arcade, Atlanta, Georgia.

[fol. 3] Order Settling Bill of Exceptions

I hereby certify that the foregoing bill of exceptions is true. The Clerk of the Superior Court of Spalding County, Georgia, is hereby ordered and directed to file this bill of exceptions and certify it and transmit it to the next term of the Court of Appeals of Georgia that the errors alleged to have been committed may be considered and corrected. I further certify that the said bill of exceptions contains all the record material to a clear understanding of the errors complained of.

This the 3 day of July, 1936.

Wm. E. H. Searcy, Jr., Judge of Superior Courts of Griffin Circuit of Georgia.

Service of the foregoing bill of exceptions is hereby acknowledged.

This the 3 day of July, 1936.

J. O. Futral, Attorney for City of Griffin, Defendant in Error. W. H. Connor, Sol. Gen. Griffin Circuit.

[fol. 4] In Superior Court of Spalding County

Petition for Certiorari

To the Superior Court of Spalding County, Georgia:

The petition of Alma Lovell respectfully shows:

1. That on June 29, 1936, there came on to be tried in the Recorder's Court of the City of Griffin, Georgia, before

Honorable D. R. Cumming, one of the commissioners of said City, who was then and there acting as Recorder and was presiding in said case, the case of the City of Griffin against Alma Lovell, petitioner, the same being a prosecution for a violation of an ordinance of the City of Griffin which reads as follows:

ORDINANCE OF CITY OF GRIFFIN

"Be it ordained by the Board of Commissioners of the City of Griffin:

"Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin.

"Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance."

DEMURRER AND MOTION TO DISMISS

On the trial of said case, before arraignment of said charge, the defendant in said case, petitioner herein, filed an oral demurrer to the charge against her, said demurrer being accepted by the court in lieu of a written demurrer, and moved to dismiss the case against her on the following grounds:

1. Because said ordinance is void in that it fails to provide any penalty for a violation thereof.

2. Because said ordinance is contrary to and in violation [fol. 5] of the first amendment to the Constitution of the United States, which reads:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the

right of the people peaceably to assemble and to petition the government for a redress of grievances."

Said ordinance is also contrary to and in violation of the fourteenth amendment to the Constitution of the United States, which had the effect of making the said first amendment applicable to the States, and which reads:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the City Manager and thus abridges the freedom of the press, contrary to the provisions of said quoted amendments.

Said ordinance also prohibits the free exercise of petitioner's religion and the practice thereof by prohibiting the distribution of literature about petitioner's religion in violation of the terms of said quoted amendments.

3. Because said ordinance is void in that it limits, curtails, and restrains the liberty of the press, contrary to and in violation of Article 1, Section 1, Paragraph 15, of the Constitution of Georgia, which reads:

"No law shall ever be passed to curtail or restrain the liberty of speech *of or* the press; any person may speak, [fol. 6] write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

4. Because said ordinance is void in that it prohibits the free exercise of defendant's religion and the practice thereof and seeks to control the right of defendant to worship God according to the dictates of her own conscience by prohibiting the circulation of literature about defendant's religion, contrary to and in violation of Article 1, Section 1, Paragraph 12, of the Constitution of Georgia, which reads:

"All men have the natural and inalienable right to worship God, each according to the dictates of his own conscience, and no human authority should in any case control or interfere with such right of conscience."

5. Because the ordinance is void for the reason that it conflicts with a valid law of the State of Georgia providing how nuisances may be abated, and the recorder has no authority under the law to fine defendant for maintaining a nuisance, and no fine can legally be placed on defendant for maintaining a nuisance until after a proceeding to abate the nuisance has been had. The law with which said ordinance conflicts is set out in Acts of 1892, p. 64, Section 5331 of Michie's Code of Georgia, and reads:

"If a nuisance complained of exists in a town or city under the government of a mayor, intendant, alderman, wardens, or a common council, or commissioners, such nuisance, by and with the advice of said aldermen, wardens, council, or commissioners, may be abated and removed by order of said mayor, intendant, or commissioners; but if the nuisance complained of exists in a city having a population of twenty thousand or more, the police court of such city, whether known as mayor's or recorder's court or otherwise designated, shall have jurisdiction to hear and determine the question of the existence of such nuisance, and, if found to exist, to order its abatement, which order shall [fol. 7] be directed to and executed by the sheriff or the marshall of said town or city, or his deputy."

Said ordinance also conflicts with section 681 of the Penal Code (Michie's), which reads:

"Any person who shall erect, or continue after notice to abate, a nuisance which tends to annoy the community, or injure the health of the citizens in general, or to corrupt the public morals shall be guilty of a misdemeanor."

6. Said ordinance is void for the reason that the maintaining of a nuisance is a violation of the law of the State as quoted in paragraph 5 hereof, and the commissioners of the City of Griffin were without authority of law to enact said ordinance and make a violation thereof an offense against the City of Griffin which could be punished by the recorder of said City by fine or imprisonment.

JUDGMENT

The court overruled this demurrer and proceeded with the trial of the case. After hearing the evidence in said case, the said acting recorder adjudged defendant guilty of a violation of said City ordinance quoted herein and imposed a sentence of fifty days in jail, in default of the payment of a fine of fifty dollars, against petitioner.

Said final sentence of the said acting recorder and the judgment overruling petitioner's demurrer were both adverse to your petitioner and she is dissatisfied therewith, and now, within thirty days from the final determination of said cause, petitioner having complied with all the requirements of law in such cases provided, presents this petition for writ of certiorari, in which petition she here and now proceeds plainly, fully, and distinctly to set forth the nature of said cause, what occurred on said trial, and the errors complained of.

The following evidence was introduced:

[fol. 8] J. T. WILSON, a witness for the City of LaGrange, testified as follows:

My name is J. T. Wilson, I am a police officer of the City of Griffin. On April 20, 1936 I saw the defendant, Alma Lovell, in the City of Griffin at 415 West Solomon Street, at Mrs. Smith's house. This lady came up Solomon Street and went to Mrs. Smith's house and knocked on the door. She stuck a pamphlet in the mail box. When Mrs. Smith came to the door this lady took the pamphlet out of the box and handed it to her, and also gave her a "Golden Age Magazine." Mrs. Smith told her that she did not have time to read and did not care to fool with it. When she came off Mrs. Smith's porch, I walked up to her and told her that I would have to take her to the station house. She asked me if I had a warrant for her arrest, and I told her that I did not have to have a warrant to arrest her in the City of Griffin for violating a city ordinance. I could not hear what she said to Mrs. Smith. I was about fifty feet away. I do not actually know what she put in the mail box. It was about so long (indicating a few inches with his hands.") I did not look at it or examine it. I just saw her put the pamphlet in the mail box. I did not understand anything said between the two ladies, only something about some books. The defendant had a little

red book and a magazine called the "Golden Age". That is a copy of the magazine she had here in court. (The magazine was introduced in evidence, but is not copied herein for the reason that the defendant admitted and now admits that she distributed the character of literature attempted to be covered by the ordinance, and the contents of the magazine in full are deemed immaterial.) I did not search her.

[fol. 9] R. A. Drake, a witness for the City, testified as follows:

I am the City Manager of the City of Griffin and every one applies to me for a license to distribute literature in this City. None of these people (including defendant) secured a permit from me to distribute literature in the City of Griffin.

The defendant admitted in open court, through her counsel that she distributed the literature as alleged, and that she did not have a permit to do so from the City Manager of the City of Griffin.

The defendant made a statement, a copy of which is attached hereto, marked "Exhibit A," and made a part of this petition.

This concluded the evidence, whereupon the recorder imposed the sentence hereinbefore set out. Petitioner now brings this sentence and judgment of the said acting recorder before the Superior Court of Spalding County, Georgia, for review, and says that the same is illegal because of the errors hereinafter set forth, to wit:

Assignments of Error

1. Because the said judgment is contrary to law and without evidence to support it.

2. Because the court erred in overruling petitioner's demurrer to the accusation against her on the ground that the said judgment and ruling is contrary to law, and the court should have sustained said demurrer for each and all of the reasons set out in said demurrer.

3. Because the said acting recorder was without authority under the law to impose the sentence on petitioner for the reason that the ordinance, for a violation of which petitioner was tried, provides no penalty and does not author-

ize the recorder either to fine or to imprison a person convicted thereunder.

4. Because, under the evidence, even if the ordinance [fol. 10] should be held to be valid, the most that the recorder could do would be to refer the matter to the mayor, city manager, and commissioners in a proceeding to abate the nuisance. It is here set forth that Griffin, Georgia, is a City of less than twenty thousand population.

5. Because the evidence shows without conflict a violation of law, if any existed, was a violation of the two sections of the Code of Georgia quoted in this petition for certiorari, and the recorder was without authority to sentence petitioner to either fine or imprisonment for a violation of such State law.

Petitioner shows, that, desiring to certiorari said case, she has executed and filed with the Clerk of the Recorder's Court of said City of Griffin her affidavit giving notice of her intention to certiorari said case, copy of which is attached, marked "Exhibit B", and made a part of this petition.

Petitioner has given bond in the amount assessed by said acting recorder who tried petitioner for petitioner's appearance to abide the final order, judgment, or sentence of the court in said case, which bond has been attested and approved and accepted by the Clerk of said Recorder's Court. A certified copy of said bond is hereto attached, marked "Exhibit C", and made a part of this petition.

Petitioner attaches hereto a certificate of the Clerk of the Recorder's Court of the City of Griffin, certifying that said bond has been approved and accepted by said Clerk and filed with him as by statute provided. Said certificate is marked "Exhibit D", and made a part of this petition.

Wherefore, petitioner prays that the State's writ of certiorari do issue, directed to Honorable D. R. Cumming, acting Recorder as aforesaid, requiring him to certify and send up all proceedings in said case to the next term of the Superior Court of said County, that such judgment [fols. 11-12] may be rendered therein as may seem in accordance with law.

John O. Owen, Attorneys for Petitioner, 432 Peachtree Arcade, Atlanta, Georgia.

Duly sworn to by Alma Lovell. Jurat omitted in printing.

[fol. 13] IN SUPERIOR COURT OF SPALDING COUNTY

ORDER REFUSING SANCTION OF PETITION

The foregoing petition for certiorari read and considered. While this Court may not take cognizance of municipal ordinances the Recorder's Court may do so and it may properly be assumed by me that there existed such ordinance prescribing a penalty to be imposed where one is convicted of "an offense against the City of Griffin" and that the Recorder's Court did not exceed this penalty in its sentence now complained of. I know of no reason why the City by ordinance may not declare certain acts to be "nuisances", provided, of course, there is no conflict between the ordinance and State law—there is no such conflict here. For no reason alleged in the petition is this ordinance "unconstitutional".

Sanction of the petition is refused. This the 2 day of July, 1936.

Wm. E. H. Searcy, Jr., Judge.

[fol. 14] EXHIBIT "A" TO PETITION

I am consecrated to Jehovah God and worship God in spirit and in truth, am an ordained minister of Jehovah God, sent forth by His command to preach the gospel of God's kingdom under Christ Jesus, and am therefore one of Jehovah's witnesses. I worship Almighty God by obeying His commandments to go from place to place and tell others of God and His kingdom. My work as such minister is done under the direction of the Watch Tower Bible & Tract Society, which is a corporation organized under the laws of Pennsylvania, the chartered purpose being as follows:

"The purpose for which the corporation is formed is the dissemination of Bible truths in various languages by means of the publication of tracts, pamphlets, papers, and other religious documents, and by the use of all other lawful means, which its Board of Directors, duly constituted, shall deem expedient for the furtherance of the purpose stated."

I have an identification card from the Society which is offered in evidence. On the other side of this card is a

statement, which we call a testimony, concerning the books and booklets which are used in preaching the gospel. This is also offered in evidence. As I went from door to door I presented this card to the people and asked them to read it.

At the time of my arrest I was engaged in preaching the gospel of God's kingdom. This gospel concerns the kingdom for which people have prayed for centuries, that the will of God might be done on earth as it is done in heaven. We bring to the people the proofs that the time is at hand for the establishment of the kingdom of Jehovah God. The present disturbed condition of the nations, with the perplexity and distress prevailing among the people, are among the evidences that Satan's rule over the earth is [fol. 15] nearing its end, and will be followed by God's kingdom which will bring righteousness and peace to all people who are willing to hear and obey Almighty God.

I was doing this work in obedience to God's law which says, "And this gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." (Matthew 24:14.) I am a Christian and have entered into a covenant or agreement to do the will of God and obey His commandments. Therefore it is incumbent upon me to obey His mandate to preach the gospel. "For necessity is laid upon me; yea, woe is unto me, if I preach not the gospel." (1 Corinthians 9:16.) Other commands to preach are found in the Bible at Isaiah 61:1-3, Isaiah 43:10-12, John 18:37, and 1 Peter 2:21, which are as follows:

The Spirit of the Lord God is upon me; because the Lord hath annointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound: To proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn: To appoint unto them that mourn in Zion, to give unto them beauty for ashes, the oil of joy for mourning, the garment of praise for the spirit of heaviness: that they might be called trees of righteousness, the planting of the Lord, that he might be glorified.

Ye are my witnesses, saith the Lord, and my servant whom I have chosen; that ye may know and believe me, and understand that I am he: before me there was no God

formed, neither shall there be after me. I, even I, am the Lord; and beside me there is no savior. I have declared, and have saved, and I have shewed, when there was no strange god among you: therefore ye are my witnesses, saith the Lord, that I am God.

[fol. 16] Pilate therefore said unto him, Art thou a king then? Jesus answered, Thou sayest that I am a king. To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth. Every one that is of the truth heareth my voice.

For even hereunto were ye called: because Christ also suffered for us, leaving us an example, that ye should follow his steps.

I was going from house to house just as Christ Jesus and His disciples did. (Matthew 10:7-15; Acts 20:20.)

And as ye go, preach, saying, The kingdom of heaven is at hand. Heal the sick, cleanse the lepers, raise the dead, cast out devils; freely ye have received, freely give. Provide neither gold, nor silver, nor brass in your purse. Nor scrip for your journey, neither two coats, neither shoes, nor yet staves: for the workman is worthy of his meat. And into whatsoever city or town ye shall enter, enquire who in it is worthy; and there abide till ye go thence. And when ye come into and house, salute it. And if the house be worthy, let your peace come upon it; but if it be not worthy, let your peace return to you. And whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet. Verily I say unto you, It shall be more tolerable for the land of Sodom and Gomorrah in the day of judgment, than for that city.

And how I kept back nothing that was profitable unto you, but have shewed you, and have taught you publicly, and from house to house.

I am commanded by God's word to follow in the footsteps of Jesus and preach the gospel as He did. (1 Peter 2:21.)

For even hereunto were ye called: because Christ also suffered for us, leaving us an example, that ye should follow his steps.

If I did not obey these commandments I would in due [fol. 17] time be eternally destroyed. (Acts 3:22, 23.)

For Moses truly said unto the fathers, A prophet shall the Lord your God raise up unto you of your brethern, like

unto me; him shall ye hear in all things whatsoever he shall say unto you. And it shall come to pass, that every soul, which will not hear that prophet shall be destroyed from among the people.

I offer in evidence the Word of God, the Bible.

At the time of my arrest I had been calling on people at their homes. I told them about the kingdom of Jehovah. I displayed to them books and booklets which explain the gospel of the Kingdom, and gave them opportunity to secure this printed message. I further offered the people invitations to hear the Kingdom message over the radio. The books and booklets I displayed to the people are offered in evidence.

The act for which I was arrested was an act of worship of Almighty God. Preaching the gospel is part of my sincere worship of Jehovah. To worship doesn't mean to go to church or go through some religious ceremony. It does mean to obey and serve God because of unselfish love and devotion to Him. I was thus worship-ing God as commanded in His Word and in accordance with the dictates of my conscience.

I did not ask for a permit, because I am sent by Jehovah to do His work. His law is supreme and above every human law. To apply for a permit to do His work would be an act of disobedience to His commandment. It would be an insult to the Most High which would in time result in my eternal destruction.

I am very willing to obey all laws which do not conflict with the law of God. I am commanded in the Bible to "render unto Caesar (the worldly governments) the things which be Caesar's, and unto God the things which be God's". By preaching the gospel of God's kingdom from house to house I am rendering unto God the things which [fol. 18] be God's, and no earthly power can rightly interfere with my so doing.

The Bible plainly points out that cases similar to this one now before this court would arise in these present days, because, in Mark 13:9, as an admonition to Jehovah's witnesses, are written these words: "But take heed to yourselves; for they shall deliver you up to councils (courts); and in the synagogues ye shall be beaten; and ye shall be brought before rulers and kings for my sake, for a testimony against them."

The question at issue is not a new one. The early disciples of Jesus were brought into court on a charge identical with the one before this court. The disciples Peter and John were the defendants in that case, and it is recorded, in Acts 4:19, that they answered the court in these words: "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye."

When again these two disciples were brought into court on a like charge, a member of that court gave wise counsel to his fellow members of the council, and his language is recorded at Acts 5:34-39, to wit:

"Then stood there up one in the council, a Pharisee, named Gamaliel, a doctor of the law, had in reputation among all the people, and commanded to put the apostles forth a little space; and said unto them, Ye men of Israel, take heed to yourselves what ye intend to do as touching these men. For before these days rose up Theudas, boasting himself to be somebody; to whom a number of men, about four hundred, joined themselves; who was slain; and all, as many as obeyed him, were scattered, and brought to nought. After this man, rose up Judas of Galilee, in the days of the taxing, and drew away much people after him: he also perished; and all, even as many as obeyed him, were dispersed. And now I say unto you, Refrain from these men, and let them alone: for if this counsel or this work be of men it will come to nought; but if it be of God, ye [fol. 19] cannot overthrow it; least haply ye be found even to fight against God."

As a defendant before this court I stand exactly in this position, and freely admit that at the time of being arrested I was going from house to house, preaching the gospel of Jehovah's kingdom by means of exhibiting to the people that gospel message in printed form. I was not selling books, or soliciting for any commercial purpose. The State is expressly estopped from interfering with this work, by virtue of the fundamental law of the state and the nation. If the state or municipality has no legal right to interfere with such preaching of the gospel, then manifestly no one of the state or municipality could have any right or authority to issue a permit to do this very thing.

I must obey Jehovah God's law because it is superior to any law that man can make; and if the court insists upon inflicting punishment upon me because I am obeying God,

then the court must take the responsibility before Jehovah God. I therefore submit my case.

[fol. 20] EXHIBIT "B" TO PETITION

Case No. —

CITY OF GRIFFIN

vs.

ALMA LOVELL

In the Recorder's Court of the City of Griffin. Accusation or Charges—Violation of 1936 Ordinance Regulating Distribution of Literature

GEORGIA,
Spalding County:

Comes now the Defendant named in the above stated case, and being dissatisfied with the judgment rendered therein, and being sworn on oath, says that * * * she intends to certiorari said case to the Superior Court, and to apply to the Judge of the Superior Court for the grant of a writ of certiorari: Affiant says * * * he has not had a fair trial, and that she has been wrongfully and illegally convicted, and files this notice as required by law, for a stay of the execution of the sentence in the said case until she can obtain a writ of certiorari in said case.

Alma Lovell.

Sworn to and subscribed before me this 29th day of June, 1936. Louise Smith, Notary Public, State at Large. My commission expires 5/19/1940.

[fol. 21] EXHIBIT "C" TO PETITION

GEORGIA,
Spalding County:

We, Alma Lovell, as principal, and the undersigned as security, acknowledge ourselves jointly and severally bound

unto the City of Griffin in the sum of $65.00 subject to the following conditions, to-wit: The Principal of this bond having been on the 29th day of June, 1936, convicted in the Recorder's Court of the City of Griffin for violating Section Ordinance Jan. 28, 1936 distributing literature in the City of Griffin and having been given a sentence of 50 days in the City Stockade or pay a fine of $50.00 and her bond being assessed at $65.00, the said Principal having filed notice of intention to certiorari said case as by law provided: Now, if the said Alma Lovell shall personally appear and abide the final order, judgment or sentence upon her in said case, then this bond to be void, else of force.

Witness our hands and seals 29 day of June, 1936.

Alma Lovell, Principal. (Seal.) Lamar Clay, Security. (Seal.)

Approved: (Signed) D. R. Cumming, Judge Protem. (Signed) R. A. Drake, Clerk Recorder's Court, City of Griffin.

[fol. 21a] EXHIBIT "D" TO PETITION

GEORGIA,
Spalding County,
City of Griffin:

I, R. A. Drake, Clerk of the Recorder's Court of the City of Griffin, Georgia, do hereby certify that Alma Lovell, petitioner in the foregoing petition for certiorari, has filed with me as Clerk as aforesaid a bond as fixed by law, conditioned that she will appear personally and abide the final judgment, order or sentence of the court in said case; and that I, as Clerk as aforesaid, have attested, accepted, and approved said bond as approved by the Judge. I further certify that Exhibit C attached to the foregoing petition is a true and correct copy of the original bond referred to above and which has been filed with me.

This the 2nd day of July, 1936.

R. A. Drake, Clerk of Recorder's Court of the City of Griffin, Georgia.

Due and legal service of notice of the order refusing sanction of the foregoing petition for certiorari is hereby

acknowledged. All other and further service and notice is hereby waived.

This the 2 day of July, 1936.

J. O. Futral, City Attorney of the City of Griffin, and Attorney of Record for Defendant in Certiorari.

[fols. 22-23] [File endorsements omitted.]

[fol. 24] IN COURT OF APPEALS OF GEORGIA

25850

LOVELL

v.

CITY OF GRIFFIN

OPINION

By the Court:

MACINTYRE, J.:

1. There was no conflict between the law as embodied in the Code, §§72-401, 72-9901, and the municipal ordinance as follows: "Be it ordained by the Board of Commissioners of the City of Griffin: Section 1: That the practice of distributing either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin. Section 2: The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance."

2. The ordinance is not unconstitutional because it abridges the freedom of the press or prohibits the distribution of literature about the petitioner's religion, in violation of the fourteenth amendment to the constitution of the

United States, (Code, § 1-815). See Coleman v. Griffin, 55 Ga. App. 123 (189 S. E. 427). The ordinance is not attacked on the ground that it arbitrarily grants to the city manager the power to grant or refuse a license at will, such power being uncontrolled by any rule or standard or provision for review.

3. The charge that an ordinance is void because it violates a designated, numbered article, section, and paragraph of the constitution of the State of Georgia or of the United States, and then quotes the part of the constitution attacked, without stating wherein it violates the provision of the constitution, is too indefinite to invoke a ruling upon [fol. 25] the constitutionality of the ordinance. Curtis v. Helen, 171 Ga. 256 (155 S. E. 202).

4. "In the trial before a municipal court, the recorder, or the presiding judge, may take judicial notice of the ordinances of the city defining offenses against the same." Bateman v. Atlanta, 51 Ga. App. 10 (179 S. E. 403).

5. The judge of the superior court did not err in refusing to sanction the petition for certiorari.

Judgment affirmed. Broyles, C. J., and Guerry, J., concur.

[fols. 26-36] IN COURT OF APPEALS OF GEORGIA

ALMA LOVELL

v.

CITY OF GRIFFIN

JUDGMENT—March 11, 1937

This case came before this court upon a writ of error from the superior court of Spalding county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

Broyles, MacIntyre and Guerry, JJ., concur.

[fols. 37-38] IN SUPREME COURT OF GEORGIA

ALMA LOVELL

v.

CITY OF GRIFFIN

ORDER DENYING CERTIORARI—May 18, 1937

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the writ be hereby denied. All the Justices concur, except Russell, C. J., who dissents, and Beck, P. J., absent on account of illness.

Clerk's certificate to foregoing paper omitted in printing.

Filed in office May 31, 1937. Morgan Thomas, Deputy Clerk Court of Appeals of Georgia.

[fol. 39] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 15, 1937.

The appellant in the above entitled suit, has prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Court — Appeals of the State of Georgia on the 11th day of March, 1937, and from each and every part thereof, and having presented and filed her petition for appeal, assignment of errors, prayer for reversal and statement as to Jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such cases made and provided:

It is now therefore ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Court of Appeals of the State of Georgia in the above entitled cause, and that said appeal shall act as a supersedeas, the bond herewith presented being approved and that said supersedeas shall stay the enforcement of the judgment rendered against the said Alma Lovell, appellant, until further order of this court, and it is

further ordered that the Clerk of the Court of Appeals of the State of Georgia shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said court within forty (40) days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of two hundred and fifty ($250.00) dollars.

Dated: July 13, 1937.

Nash R. Broyles, Chief Judge of the Court of Appeals of the State of Georgia.

[File endorsement omitted.]

[fol. 40] IN COURT OF APPEALS OF GEORGIA

[Title omitted]

ASSIGNMENT OF ERROR ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 15, 1937

Appellant assigns as error the decision of the Court of Appeals of Georgia, affirming the judgment of Honorable William E. H. Searcy, Jr., Judge of the Superior Court of the Griffin Circuit, refusing the grant of writ of certiorari asking to review the judgment of W. H. Beck, Jr., recorder of the City of Griffin, convicting the appellant of a violation of an ordinance of the City of Griffin for the distribution of religious literature as a part of her missionary activities in the City of Griffin without having first obtained a permit from the City Manager of the City of Griffin in pursuance of ordinance of said city, and appellant says that the Court of Appeals of Georgia erred in affirming said judgment under which appellant was sentenced to pay a fine of fifty dollars or in default thereof to be confined in the City jail for fifty days for that said ordinance is void and the appellant will be deprived of her liberty and property without due process of law and without the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States and the First Amendment to the Constitution of the United States, in

that in its decision and judgment the Court of Appeals of Georgia erred.

1. In holding that said ordinance of the City of Griffin was valid as against the acts of appellant, complained of, done in obedience to the mandate of the Most High God Jehovah, whose laws and commandments are superior to all human laws, ordinances, statutes, or regulations, to the contention of appellant, that said ordinance of the City of [fol. 41] Griffin in prohibiting the circulation of all printed matter without first securing a permit from the city manager was arbitrary, capricious and unreasonable and set up a prohibition bearing no relationship to public health, morals or welfare or any matter within the domain of the police power, and hence deprived both appellant and others similarly situated the free exercise of religion, right of worship, their liberty and property without due process of law and in violation of the constitutional provision aforesaid.

2. In holding said ordinance valid as against the acts of appellant in performing her duties as a minister of the gospel and as a missionary, in that said ordinance is in conflict with the provisions of the Constitution of the United States, guaranteeing freedom of worship in accordance with the dictates of conscience as set out in the First Amendment to the Constitution of the United States to the effect that "Congress shall make no laws respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances," and, which said rights are guaranteed from invasion by the states through the Fourteenth Amendment.

3. In holding said ordinance valid as against the acts of appellant in depriving her the liberty of engaging in the necessary work of calling upon the people and freely giving to them literature and magazines explaining the doctrines and tenets of her Christian belief, and the free exercise of her religious belief and practice, and freedom of worship, it appearing that the acts of this appellant were in no way unmoral, criminal, or against the good taste or sense of propriety, or dignity of the state, in that said ordinance is in conflict with the provisions of the Fourteenth Amend-

ment to the Constitution of the United States, providing that "no state shall deprive any person of life, liberty or happiness without due process of law."

4. In holding that said ordinance is valid as against the acts of appellant in that said ordinance was arbitrary and placed in the discretion of the City Manager of the City [fol. 42] of Griffin unlimited and restrained powers, in that said ordinance did not set up any standards regulating the application of said ordinance, and that said ordinance fixed no rule for the guidance or control of the City Manager of the City of Griffin in granting or refusing permits, and said ordinance did not set up any standard regulating the application of said ordinance to acts which are unmoral or against the peace, good order, and dignity of the state, and said ordinance is in violation of the due process clause of the Constitution of the United States on that account.

5. In holding that "the said ordinance is not unconstitutional because it abridges the freedom of the press or prohibits the distribution of literature about petitioner's religion in violation of the Fourteenth Amendment of the Constitution of the United States," to the contention of appellant that said ordinance of the City of Griffin in prohibiting the circulation of all printed matter without first securing a permit from the city manager was arbitrary, capricious and unreasonable and set up a prohibition bearing no relation to public health, morals or welfare or any matter within the domain of the police power and hence deprived appellant and others similarly situated the right of freedom of the press and the right to freely circulate printed tracts pertaining to her Christian practice and sincere worship in violation of the First Amendment and the "due process of law" Clause of the Fourteenth Amendment of the Constitution of the United States.

6. In failing and refusing to pass upon and to decide the contention of the appellant that said ordinance was void and invalid and for the reason, as set forth in petition for certiorari, that "said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the city manager and is therefore arbitrary and in violation of said quoted Amendments," quoting paragraphs one and two of the Fourteenth Amendment to the Constitution of the

United States, containing the "due process of law" clause, [fols. 43-59] in that said ordinance vested uncontrolled and unrestrained arbitrary power in the City Manager of the City of Griffin with reference to granting or refusing permits to appellant in the exercise and practice of her religion.

7. In holding that said ordinance was valid, in that said ordinance has the effect of making any act of the character described in said ordinance illegal whether the act be harmless in its nature and in that the arbitrary decision of the City Manager of the City of Griffin under said ordinance is left unrestrained without any standard or guidance with respect to the character of literature circulated or distributed, and providing no adequate method of securing relief from the arbitrary decisions of City Manager.

For which errors the plaintiff, Alma Lovell, prays that the said judgment of the Court of Appeals of the State of Georgia, in the above entitled cause, be reversed and a judgment rendered in favor of said plaintiff, and for costs.

O. R. Moyle, Grover C. Powell, Counsel for Appellant.

[File endorsement omitted.]

[fol. 60] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed September 7, 1937

1

The appellant, Alma Lovell, pursuant to paragraph 9 of rule 13 of the Supreme Court, adopts the assignment of errors as the statement of the points required by rule 13.

2

The following parts of the record are indicated by appellant as necessary for the consideration of the points at issue in the above styled case:

(a) Bill of exceptions dated July 3, 1936 together with exhibit (a) attached to said bill of exceptions, said exhibit

(a) being writ of certiorari to a judgment of William H. Beck, Jr., Recorder of the City of Griffin, entered on the 29th day of June, 1937.

(b) The judgment and opinion of the court thereon entered by the Court of Appeals of Georgia on March 11, 1937.

(c) Judgment of the Supreme Court of Georgia dated May 18, 1937 denying a petition for certiorari filed by Alma Lovell, plaintiff in error to review and set aside the final judgment of the Court of Appeals of Georgia.

(d) Assignment of errors to the Supreme Court of the United States.

(e) Statement of jurisdiction accompanying appeal to the Supreme Court.

O. R. Moyle, 117 Adams St., Brooklyn, N. Y., Grover C. Powell, 1459 Peachtree St., Atlanta, Ga., Counsel for Appellant.

Due and legal service of the foregoing statement acknowledged, copy received, and all further and other service waived.

This the 13 day of July, 1937.

J. O. Futral, Pope F. Brock, Counsel for Appellee.

[fol. 61] [File endorsement omitted.]

Endorsed on cover: Enter O. R. Moyle. File No. 41,872. Georgia Court of Appeals. Term No. 391. Alma Lovell, appellant, vs. The City of Griffin. Filed September 7, 1937. Term No. 391, O. T., 1937.

FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 7 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 391

ALMA LOVELL,

Appellant,

vs.

CITY OF GRIFFIN.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF GEORGIA.

STATEMENT AS TO JURISDICTION.

/ C. R. Morris,
Counsel for Appellant.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statute sustaining jurisdiction	1
The statute drawn into question	2
The nature of the cause	2
Appendix—Opinion of the Court of Appeals of Georgia	11
Opinion of the Court of Appeals of Georgia in *Coleman* v. *City of Griffin*	12

Table of Cases Cited.

Allgeyer v. *Louisiana*, 165 U. S. 578, 41 L. Ed. 832	7
Bent v. *State of West Virginia*, 129 U. S. 114	9
Coleman v. *Griffin*, 55 Ga. App. 123, 189 S. E. 427	8
Coppage v. *Kansas*, 236 U. S. 1	8
Gitlow v. *New York*, 268 U. S. 652, 69 L. Ed. 1138	7
Grosjean v. *American Press Co.*, 297 U. S. 242	7, 8
Holy Trinity Church v. *United States*, 145 U. S. 457	8
Howell v. *Alabama*, 287 U. S. 45	8
Meyer v. *Nebraska*, 262 U. S. 390	8, 9
Near v. *Minnesota*, 283 U. S. 697, 75 L. Ed. 1357	7, 8
Washington State of, v. *Roberge*, 278 U. S. 116	9
Watson v. *Jones*, 80 U. S. 679	8
Yates v. *Milwaukee*, 77 U. S. 497	9
Yick Wo v. *Hopkins*, 118 U. S. 356	9

Statutes Cited.

Act of Congress of January 31, 1928, c. 14, 45 Stat. 54	2
Act of Congress of April 26, 1928, c. 440, 45 Stat. 46	2
Constitution of the United States, First Amendment	5
Fourteenth Amendment	6, 7, 9
Judicial Code, Section 237 (28 U. S. C. A. 344)	1

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 391

ALMA LOVELL,

Appellant,

vs.

CITY OF GRIFFIN.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF GEORGIA.

JURISDICTIONAL STATEMENT.

Statute Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 of the Judicial Code (U. S. C. A., entitled 28, Section 344), which reads as follows:

> "A final judgment or decree in any suit of the highest court of the state in which a decision in the suit could be had, * * * where is drawn in question the validity of a statute of any state, on the ground of it being repugnant to the Constitution, treaties, or laws

of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ of error shall have same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may, in its decision, award execution or remand the cause to the court from which it was removed by the writ."

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 46, an appeal may be taken in any case which under prior statute could be received as a matter of right or writ of error.

The Statute Drawn Into Question.

In said case the appellant was charged with having violated Section one of an ordinance passed by the City of Griffin, a municipal corporation under the laws of Georgia, which section of said ordinance reads as follows:

"Section one, that the practice of distributing, either by hand or otherwise circulars, handbooks, advertisements, or literature of any kind, whether said articles are being delivered free or whether same are being sold within the city limits of the City of Griffin without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance and punishable as an offense against the City of Griffin."

The Nature of the Cause.

On the 29th day of June, 1936, appellant was tried and convicted in the recorder's court of the City of Griffin for the violation of the ordinance above set out and was adjudged guilty and was sentenced to fifty days in jail in default of the payment of a fine of $50.00.

Appellant's petition for writ of certiorari to said judgment was on the 2nd day of July, 1936, denied and the issuance of the writ refused by the Honorable William E. H. Searcy, Jr., Judge of the Superior Court of the Griffin Circuit.

To this judgment refusing the issuance of the writ of certiorari, appellant brought her bill of exceptions to the Court of Appeals of Georgia.

The facts show that appellant was a minister of the gospel and that at the time she was arrested and accused of violating the ordinance of the City of Griffin, as set out above, she was engaged in going from house to house in the City of Griffin as a minister of the gospel and in the interest of her Christian belief and was engaged in distributing religious literature; for this she was arrested, tried and convicted under the ordinance of the City of Griffin aforesaid.

The Court of Appeals of Georgia on the 11th day of March, 1937, affirmed the judgment of the lower court and upon petition for rehearing the same was denied March 31, 1937.

The plaintiff in error thereupon filed with the Supreme Court of Georgia her petition for writ of certiorari to the judgment of the Court of Appeals of Georgia to review the judgment therein. Upon said petition for writ of certiorari, the Supreme Court of Georgia on May 18, 1937, entered its final order denying the issuance of the writ thereupon making the judgment of the Court of Appeals final upon the issue involved.

It was to correct this judgment that an appeal was prayed to the Supreme Court of the United States, which appeal was allowed by Hon. Nash R. Broyles, Chief Judge of the Court of Appeals of Georgia on 13 day of July, 1937.

The Court of Appeals of the State of Georgia is the highest court of said State in which a decision in this case may be had.

The questions involve the right of free exercise of freedom of conscience, freedom of worship and of the free exercise of religious belief and practice as against the validity of arbitrary ordinances and police regulations.

The ordinance of the City of Griffin brought in question violates the provisions of the Constitution of the United States providing against the making of laws respecting an establishment of religion or the prohibiting of the free exercise thereof and freedom of worship or abridging the freedom of speech and of the press.

Said ordinance, as applied to the work of the defendant, is in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws; that said decision involved the validity of the ordinance of the City of Griffin as against the acts of petitioner done in obedience to the mandate of the Most High God, Jehovah, whose laws and commandments are superior to all human laws, ordinances, statutes, or regulations. In the petition for certiorari brought by appellant to review the judgment of the Recorder's Court of Griffin, appellant, excepted to the judgment of the recorder on the ground that the ordinance of the City of Griffin in question should not apply under the evidence in the case for the reason that if so applied, it is a violation of the Constitution of the State of Georgia which says, "All men have the natural and inalienable right to worship God according to the dictates of their conscience and no human authority should in any case control or interfere with such right of conscience."

In the petition for certiorari, to review the judgment of the recorder, it expressly states that said ordinance is void, because said ordinance is contrary to and in violation of the First Amendment to the Constitution of the United States which reads:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

And to so apply the above ordinance to the work of this defendant involves a question of the utmost gravity and importance in that said ordinance prohibits the free exercise of petitioner's religion and the practice thereof by prohibiting the distribution of literature about petitioner's religion and Christian belief in violation of the terms of said amendment.

In petition for certiorari to review the judgment of the recorder it expressly states that the ordinance is void and in conflict with the above quoted First Amendment to the Constitution in that said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the City Manager and thus abridges the freedom of the press contrary to the provisions of said First Amendment.

While this provision of said First Amendment to the Constitution is not a restraint upon the powers of States, the States are precluded from abridging the freedom of speech or of the press or the free exercise of religion by force of the due process clause of the Fourteenth Amendment which was invoked in the trial court as shown by the petition for certiorari to review the judgment of the recorder. Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the

City of Griffin without the permission of the City Manager thus bringing said ordinance in conflict with the due process of law clause of the Fourteenth Amendment.

Upon the bill of exceptions to the Court of Appeals of Georgia, the court in its original decision held that the ordinance in question was not in violation of the Fourteenth Amendment to the Constitution of the United States because it abridges the freedom of the press or prohibits the distribution of literature about petitioner's religion.

On petition for rehearing the Court of Appeals of Georgia denied said petition on March 31, 1937. Thereupon a writ of certiorari was presented to the Supreme Court of Georgia for a review of the final decision of the Court of Appeals of Georgia rendered on March 11, 1937, and on May 18, 1937, the Supreme Court of Georgia entered judgment refusing the writ of certiorari, and to the final judgment of the Court of Appeals of Georgia this appeal is made.

This appeal contests the validity of the ordinance of the City of Griffin and it is assailed as violating the Federal Constitution in three particulars—(1) that it abridges the freedom of the press in contravention of the due process clause contained in paragraph 1 of the Fourteenth Amendment; (2) that it denies appellant the free exercise of religion and freedom of worship in contravention of the same amendment; (3) that it is arbitrary and vests in the city manager arbitrary power with no fixed standards of decision in contravention of the same amendment to the Constitution of the United States.

1. The first point presents a question of the utmost gravity and importance; for it goes to the heart of the natural right of the members of organized society, united for their common good, to impart and acquire information about their common interests. The judgment of the Court of

Appeals of Georgia held that the ordinance in question does not abridge the freedom of the press or prohibit the distribution of literature about petitioner's religion in violation of the Fourteenth Amendment to the Constitution of the United States. This ruling of the court involves the Federal question under the due process clause of the Fourteenth Amendment.

Gitlow v. *New York,* 268 U. S. 652, 666, 69 L. Ed. 1138, 1145;

Near v. *Minnesota,* 283 U. S. 697, 707, 75 L. Ed. 1357, 1362.

The word "liberty" contained in that amendment embraces not only the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his faculties as well.

Allgeyer v. *Louisiana,* 165 U. S. 578, 589, 41 L. Ed. 832, 835;

Grosjean v. *American Press Co.,* 297 U. S. 242.

The question of the repugnance of the ordinance to the due process clause of the Fourteenth Amendment by denying to appellant the free exercise of her religion was raised by counsel in paragraph 2 of his demurrer which is set out in petition for certiorari.

In paragraph 2 it was insisted that the ordinance was contrary to and in violation of the First Amendment to the Constitution of the United States.

In the same paragraph of the demurrer it was also insisted that the ordinance was in violation of the Fourteenth Amendment to the Constitution of the United States, quoting paragraph 2, which includes the due process clause, and stating as the reason that: "Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permis-

sion of the city manager and thus abridges the freedom of the press, contrary to the provisions of the said quoted amendments." This question was argued before the Court of Appeals and by motion for rehearing and in the petition for certiorari to the Supreme Court. For that it restricts the citizen's liberty of bodily movement, his freedom of intercourse with his fellowmen, and his right to contract to engage in common and harmless occupations, and to enjoy the rights and privileges long recognized by the law as essential to the orderly pursuit of happiness to free men. Said ordinance is not a valid exercise of the police power but is an arbitrary and unreasonable prohibition of harmless acts to which the police power plainly does not extend.

2. The judgment of the Court of Appeals held that the ordinance in question was not in violation of the rights of appellant in the free exercise of religious liberty (see *Coleman* v. *Griffin,* 55 Ga. App. 123, 189 S. E. 427), and such ruling involves the Federal question under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Grosjean v. *American Press,* 297 U. S. 242;
Howell v. *Alabama,* 287 U. S. 45, 65, 68;
Watson v. *Jones,* 80 U. S. 679;
Meyer v. *Nebraska,* 262 U. S. 390;
Holy Trinity Church v. *United States,* 145 U. S. 457;
Coppage v. *Kansas,* 236 U. S. 1;
Near v. *Minnesota,* 283 U. S. 713.

3. The judgment of the Court of Appeals decided that the "ordinance was not attacked on the ground that it arbitrarily grants to the city manager the power to grant or refuse a license at will, such power being uncontrolled by any rule or standard or provision for review." It is respectfully submitted that in paragraph 2 of the demurrer

of appellant this question was expressly raised by calling attention to the constitutional provisions of the due process clause and that contrary thereto said "ordinance absolutely prohibits the distribution of literature of any kind within the limits of the City of Griffin without the permission of the City Manager." Such ruling in favor of the validity of the ordinance raises the Federal question under the due process clause of the Fourteenth Amendment.

Yick Wo v. *Hopkins,* 118 U. S. 356;
State of Washington v. *Roberge,* 278 U. S. 116;
Bent v. *The State of W. Virginia,* 129 U. S. 114;
Meyer v. *Nebraska,* 262 U. S. 390.

There are two minor points on which the validity of the ordinance is assailed as violating the Federal Constitution as follows: (a) that it provides for summary punishment as a nuisance harmless acts in contravention of the due process clause contained in paragraph 1 of the Fourteenth Amendment; (b) That it provides no penalty, therefore making judgment or penalty on appellant void in contravention of the same amendment.

(a) The Court of Appeals decided that in addition to the general or fixed laws, the City of Griffin had a right to enact said ordinance and declare that "the practice of distributing either by hand or otherwise circulars, handbooks, advertising or literature of any kind, whether said articles are being delivered free or otherwise same are being sold, and such rule involves the Federal question under the due process clause of the Fourteenth Amendment."

Yates v. *Milwaukee,* 77 U. S. 497.

(b) The Court of Appeals of Georgia failed to pass upon and decide the question raised in paragraph 1 by appellant that the ordinance was void because said ordinance failed to provide any penalty for the violation thereof.

This was urged in brief and argument of counsel before the Court of Appeals. Such ruling involves the Federal question under the due process clause of the Fourteenth Amendment.

In so ruling the Court of Appeals denied to appellant her right to freely distribute printed matter in the free exercise of religion and worship and to thus arbitrarily declare harmless and innocent acts to be a nuisance and to summarily punish appellant when there was no penalty provided in said ordinance was a denial of appellant's rights under the Constitution.

O. R. Moyle,
Grover C. Powell,
Counsel for Appellant.

APPENDIX A.

COURT OF APPEALS OF GEORGIA.

25850.

LOVELL

v.

CITY OF GRIFFIN.

By the Court:

MACINTYRE, *J.*:

1. There was no conflict between the law as embodied in the Code, §§ 72-401, 72-9901, and the municipal ordinance as follows: "Be it ordained by the Board of Commissioners of the City of Griffin: Section 1: That the practice of distributing either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin. Section 2: The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance."

2. The ordinance is not unconstitutional because it abridges the freedom of the press or prohibits the distribution of literature about the petitioner's religion, in violation of the fourteenth amendment to the constitution of the United States (Code, § 1-815). See Coleman *v.* Griffin, 55 Ga. App. 123 (189 S. E. 427). The ordinance is not attacked on the ground that it arbitrarily grants to the city manager the power to grant or refuse a license at will, such power being uncontrolled by any rule or standard or provision for review.

3. The charge that an ordinance is void because it violates a designated, numbered article, section, and paragraph of the constitution of the State of Georgia or of the United States, and then quotes the part of the constitution attacked, without stating wherein it violates the provision of the constitution, is too indefinite to invoke a ruling upon the constitutionality of the ordinance. Curtis *v.* Helen, 171 Ga. 256 (155 S. E. 202).

4. "In the trial before a municipal court, the recorder, or the presiding judge, may take judicial notice of the ordinances of the city defining offenses against the same." Bateman v. Atlanta, 51 Ga. App. 10 (179 S. E. 403).

5. The judge of the superior court did not err in refusing to sanction the petition for certiorari.

Judgment affirmed. Broyles, C. J., and Guerry, J., concur.

APPENDIX B.

COURT OF APPEALS OF GEORGIA.

No. 25695.

COLEMAN

v.

CITY OF GRIFFIN.

By the COURT:

Restraints upon the free exercise of religion according to the dictates of conscience are unlawful under our State and national constitutions. "No external authority is to place itself between the finite being and the infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object. [But 'religious liberty does not include the right to introduce and carry out every scheme or pur-

pose which persons see fit to claim as a part of their religious system. No one can stretch his liberty so as to interfere with that of his neighbor, or violate police regulations or the penal laws of the land, enacted for the good order and general welfare of all the people.']" 2 Cooley's Constitutional Limitations (8th ed.), 968.

2. An ordinance passed by the City of Griffin, declaring "that the practice of distributing, either by hand or otherwise, circulars, hand-books, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold within the city limits of the City of Griffin, without first obtaining written permission from the city manager of the City of Griffin, shall be deemed a nuisance, and punishable as an offense against the City of Griffin," does not deprive the defendant of his constitutional right of the free exercise and enjoyment of religious profession and worship, even though it prohibits him from introducing and carrying out a scheme or purpose which he sees fit to claim as a part of his religious system. "A party's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the law of the land."

Decided September 17, 1936.
Adhered to on rehearing December 18, 1936.

MacIntyre, *J.*:

Coleman was convicted, in the recorder's court of the City of Griffin, of a violation of section 1 of an ordinance of said city which reads as follows: "That the practice of distributing either by hand or otherwise circulars, hand-books, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold within the city limits of the City of Griffin, without first obtaining written permission from the city manager of the City of Griffin, * * * shall be deemed a nuisance, and punishable as an offense against the City of Griffin." The judge of the superior court refused to sanction a petition for certiorari, and the defendant excepted.

At the trial in the recorder's court, Paul Slaton, a citizen of Griffin, testified that he knew Mr. Coleman and saw him in Griffin on March 15, and that Mr. Coleman gave him a yellow card and asked him if he did not want to buy a book. Mr. Slaton told him that he did not want to read the card and he did not want to buy a book, and then Mr. Coleman gave Mr. Slaton a radio slip. The yellow card was introduced in evidence. It read as follows: "The newspapers have had much to say about Loyalty. The Associated Press, however, declines to publish the truth regarding this issue. Every fairminded person should want to know the true facts. I would like to leave with you some booklets which discuss problems affecting you. New political methods are everywhere. Dictators grab control of the governments and make special laws. How can you be loyal to all and still be true to God? The answers in these booklets will help you, because there is no dodging or sidestepping the issue, but straightforward Bible answers, which is what you need and want. These three booklets please read carefully, and by contributing, say, ten cents, you will make it possible to print more of these which can be placed in the hands of other persons desiring truth." After the admission of this evidence, the defendant made a statement admitting that he did not obtain from the City of Griffin a permit to distribute circulars, handbooks, advertising, or literature of any kind, and that at the time he was arrested he was distributing circulars, handbooks, advertising matter, or literature within the City of Griffin. He further stated that he did not ask for a permit from the City of Griffin, because he was sent by Jehovah to do His work, and that His law is supreme and above every human law, and to apply for a permit to do His work would be an act of disobedience to His commandment and it would be an insult to Almighty God. A copy in full of said statement is as follows: "I admit that I did not obtain from the city manager of the City of Griffin a permit to distribute circulars, handbooks, and advertising, or literature of any kind; and I further admit that at the time I was arrested by the police officers of the City of Griffin I was distributing circulars, handbooks, advertising matter or literature within

the City of Griffin. I am one of Jehovah's witnesses, who are entirely devoted to God, and who obey His law by publishing his truth without money consideration. I am a true and sincere follower of Christ Jesus, who is the Son of Jehovah God. I have consecrated myself to do the will of God, and to follow in the footsteps of Jesus. In obedience to the command of Jehovah I was preaching the gospel of his kingdom from house to house when I was arrested. God's command as set forth in His holy word at Isaiah 61:1,2; Matthew 10:7,12; John 18:37; Acts 20:20; 1 Peter 2:21. If I failed or neglected to obey these commandments, I would be destroyed. This is shown in Acts 3:22, 23, which reads as follows: 'For Moses truly said unto the fathers: A prophet shall the Lord your God raise up unto you of your brethren, like unto me; him shall ye hear in all things whatsoever he shall say unto you. And it shall come to pass that every soul which will not hear that prophet shall be destroyed from among the people.' I called on the people at their homes and told them about the Kingdom of Jehovah. I displayed to them books and booklets which contain the message of the kingdom, and gave them opportunity to secure this printed message if they so desired. I further offered to the people invitations to hear the kingdom message over the radio. As I had opportunity I told the people how they could have a part in the work, either through going forth to the people with the message or by making a small contribution to assist in carrying the message forward. The message is too important and the time is too short to cover the whole work in a few words; hence the message of facts concerning Jehovah's Kingdom and giving the scriptural authority. This enables the people to sit quietly in their own homes and to inform themselves of and concerning the real meaning of present-day world distress, and of the kingdom that will bring relief. Under the authority of Jehovah I am a duly ordained and authorized minister of the gospel, and it is incumbent upon me, in obedience to God's law, to preach the gospel. I worship Jehovah God by obeying His Commandments. God's work, the Bible, commands all who worship him in spirit and in truth to go from place to place

and tell others about Him and His kingdom. At the time I was arrested I was going from house to house in obedience to His word, and according to the dictates of my own conscience. I did not ask for a permit from the police department, because I am sent by Jehovah to do his work. His law is supreme and above every human law. To apply for a permit to do His work would be an act of disobedience to his commandment. It would be an insult to Almighty God, and would in time result in my own destruction. I have no disposition to violate any law, but must obey God rather than man, and in this way I worship Him as commanded. Luke 20:25; Acts 3:23; Acts 4:19, Acts 4:34-38. I get the books and booklets to exhibit to the people from the Watch Tower Society, which is a corporation organized for the very purpose of preaching the Bible message in printed form. It publishes the messages of God's kingdom in book form to be carried to the people and exhibited to them for the purpose of informing them of the truth. The money received is far less than the cost of carrying on the work. The deficit is made up by voluntary contributions of men and women who are anxious to preach the gospel of the Kingdom in obedience to God's commands."

The defendant contends that "The ordinance involved does not apply to the work of this defendant, for the following reasons: 1. That the act complained of, and for which defendant was arrested, was done in obedience to the mandate of the Most High God Jehovah, the Creator of the universe, whose laws and commands are superior to all human laws, ordinances, statutes or regulations. 2. That to apply said ordinance to the work of this defendant brings it into conflict with the provisions of the constitution of this State, guaranteeing freedom of worship in accordance with the dictates of conscience; and further brings said ordinance into conflict with the provisions of the fourteenth amendment to the constitution of the United States, providing that no State shall deprive any person of life, liberty, or property, without due process of law. 3. That the Supreme Court of the United States has decreed that 'This is a Christian nation,' and therefore the nation and all States, counties, and municipalities are estopped and

precluded from interfering with or regulating the presentation of a Christian message to the people."

The City of Griffin had the right and power to enact the ordinance under consideration. It is constitutional and valid as prescribing a rule of action for all of those who engage in the practice of distributing either handbills or other circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free or whether the same are being sold within the city limits of Griffin. We do not think the defendant's argument is sound, that, because he conscientiously believed that he is permitted by the law of God to distribute in the City of Griffin, by hand or otherwise, circulars, handbooks, advertising, or literature of any kind without obtaining the written permission from the city manager of Griffin, he may violate with impunity an ordinance declaring it illegal to do so. A man's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the laws of the city. The ordinance which imposes the penalty operates upon all alike, and interferes with no man's religious belief. It is directed against the acts, and not the beliefs of the citizen, and a violation thereof cannot be justified by the contention that it interferes with the religious belief of the citizen. In Reynolds *v.* U. S., 98 U. S. 145 (25 L. ed. 244), where the question involved was a polygamous marriage between two persons commonly known as Mormons, who had been previously married, this doctrine was laid down: "A party's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the law of the land." See also Owen *v.* State, 6 Okla. Cr. 110, 116 (116 Pac. 345, 36 L. R. A. (N. S.) 633, Ann. Cas. 1913 B, 1218). As bearing on the question under consideration, we quote the following from the Reynolds case, *supra*: "In our opinion, the statute, immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the territories, and in places over which the United States have exclusive control. This being so, the only question which remains is whether those who make polygamy a part of their

religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions; and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of a religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? So, here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

A criminal intent is generally an element of crime, but every man is presumed to intend the necessary and legitimate consequences of what he knowingly does. The breaking of the law is the crime. Every act necessary to constitute the crime in this case was knowingly done, and therefore the crime was knowingly committed. Ignorance of a fact may sometimes be taken as evidence of a want of criminal intent, but not ignorance of the law. That defense of the accused in this case, which is his belief that the law ought not to have been enacted, is not meritorious. It matters not that his belief was a part of his professed religion; it was still belief, and belief only. There should be no restraint on the free exercise of religion according to the dictates of the conscience. No external authority should be allowed to place itself between the finite being and the Infinite when the former is seeking to render homage that is due, and in a mode which commends itself to his conscience

and judgment as being suitable for him to render, and acceptable to its object. 2 Cooley's Constitutional Limitations, 968. But "Religious liberty does not include the right to introduce and carry out every scheme or purpose which persons see fit to claim as a part of their religious system. No one can stretch his liberty so as to interfere with that of his neighbor, or violate police regulations or the penal laws of the land, enacted for the good order and general welfare of all the people. Liberty founded by the fathers was not license unrestrained by law." McMaster *v.* State, 2 Okla. Cr. 318 (207) Pac. 566, 29 A. L. R. 292). Prohibiting one from distributing literature, as stated in the ordinance, without the permission of the city manager of Griffin, does not deprive him of his constitutional right of the free exercise and enjoyment of religious profession and worship, even though it prohibits him from introducing and carrying out a scheme or purpose which he sees fit to claim as a part of his religious system.

Judgment affirmed. Broyles, C. J., and Guerry, J., concur.

On Rehearing.

MacIntyre, *J.:*

Counsel who represent the plaintiff in error on the rehearing in their brief very frankly state that "*the truth is that counsel who drew the petition for certiorari and first presented the case in this court had in mind the religious objections which he strenuously urged.* The court has held that these objections to the constitutionality of the ordinance were not good. But, if, unwittingly perhaps, counsel did present a good secular objection to the constitutionality of the ordinance, then the least the court can do is to enforce that objection to keep a man from going to jail for a crime he did not commit." (Italics ours.) The italicized part of counsel's statement is the same construction that this court put upon the petition for certiorari; that is that the objections urged by the plaintiff in error were the religious objections and did not go to the question that the discretion given by the ordinance to the city manager of Griffin was so arbitrary and uncontrolled that it was a violation of the 14th amendment to the constitu-

tion of the United States. The relevant parts of the petition for certiorari, which constitute the only record before this court of the proceedings in the trial court are as follows: "4. The ordinance should not be applied to the work of this defendant, because to so apply it brings it in conflict with the provisions of the 14th amendment of the United States constitution, which provides that no State shall deprive any person of life, liberty, or property without due process of law. 5. Petitioner shows that all questions set forth herein and assigned as error were insisted upon at the trial of said cause before the recorder." This charge as to the unconstitutionality of the ordinance, failing to state wherein the ordinance violates the 14th amendment to the constitution of the United States, is too indefinite to invoke any ruling upon the constitutionality of the ordinance. Jordan *v.* State, 172 Ga. 857 (159 S. E. 235); Curtis *v.* Helen, 171 Ga. 256 (2-c, d) (155 S. E. 202). See also Palmer *v.* Phinizy, 151 Ga. 589, 591 (107 S. E. 852). Irrespective of what may be the rulings in other States, we feel that we are bound by the rulings of the Supreme Court of this State as to when we can consider the unconstitutionality of an ordinance.

Judgment adhered to. Broyles, C. J., and Guerry, J., concur.

COURT OF APPEALS OF THE STATE OF GEORGIA.

CLERK'S OFFICE, ATLANTA.

Aug. 19, 1937.

I hereby certify that the foregoing pages attached hereto contain a true and complete copy of the opinion of the Court of Appeals of Georgia in the case therein stated, as appears from the original on file in this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[SEAL.] MORGAN THOMAS,
Deputy Clerk.

FILE COPY

Office - Supreme Court, U. S.
FILED
DEC 17 1937
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1937

No. 391

ALMA LOVELL,

Appellant,

v.

CITY OF GRIFFIN,

Appellee.

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF GEORGIA.

APPELLANT'S BRIEF

O. R. MOYLE,
Counsel for Appellant.

VAN C. POWELL,
of Counsel.

INDEX

Subject Index

	PAGE
Opinions Below	1
Jurisdiction	1
The Appeal Is Timely	2
The Statute	2
Statement of the Case	4-8
Questions Presented	9
Specification of Errors to Be Urged	9, 10
Points for Argument	10-12
Summary of Appellant's Argument	12-15
Argument	15
Point I—The ordinance as construed and applied denies and unduly restricts appellant's right to worship Almighty God in accordance with the dictates of conscience	15
(A) The right to religious freedom is guaranteed under the Fourteenth Amendment to the United States Constitution	15-19
(B) The municipality must justify any restriction on religious freedom by showing that the acts complained of violate the laws of morality or of property, infringe on personal rights, or are inimical to the safety of the state	19-21
(C) There is no justification for application of the ordinance to the activities charged against the appellant	21-26
(D) The application of the ordinance is invalid because no purpose of action against Christianity may be imputed to any statute	26-29

INDEX

Subject Index

PAGE

(E) The application of the ordinance is invalid because it may not be assumed that it was within the intention of the Board of Commissioners to enact legislation contravening the law of Almighty God 30-36

Point II—The ordinance in itself and as construed and applied by the Court of Appeals of the State of Georgia unreasonably restricts and denies freedom of speech and freedom of press and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution 36

(A) Freedom of speech and press is guaranteed under the Fourteenth Amendment to the United States Constitution 36-39

(B) The application of the ordinance is invalid because the City of Griffin did not justify such restriction and denial of free speech and free press by showing that the acts complained of were inimical to public welfare, contrary to public morals, or that they jeopardized the safety of the state 39-42

Point III—The Griffin ordinance in itself, and as construed and applied by the Court of Appeals of the State of Georgia, denies liberty and the equal protection of the law through the arbitrary and uncontrolled power given to the City Manager to issue permits for distribution of printed matter, and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution 42-46

Conclusion 47

INDEX

Table of Cases Cited

	PAGE
City of Chicago v. Anna Schultz, 341 Ill. 208 (1930)	40
Coleman v. Griffin, 55 Ga. App. 123 (189 SE 427) ..	15
Commonwealth v. Lesher, 17 S. & R. 155	24
Commonwealth v. Plaisted, 148 Mass. 375, 19 NE 224, 226	20
Davis v. Beason, 133 U. S. 333, 342	20, 32
Dearborn Co. v. Fitzgerald (D. C.) Ohio, 271 Fed. 479	39
De Jonge v. Oregon, 299 U. S. 353	36, 40
Ex Parte Campbell (Col. App.), 221 Pac. 952	39
Gitlow v. N. Y., 268 U. S. 652, 666	36
Gobitis v. Minersville School District et al. (Official Report not available)	23
Green Bay & Miss. Canal Co. v. Patten Paper Co., 172 U. S. 58	43
Grosjean v. American Press Co., 297 U. S. 233	36
Hamilton v. Regents, 293 U. S. 245	15, 21
Herndon v. Lowry, 301 U. S. 242	14, 38
Holy Trinity Church v. U. S., 143 U. S. 457, 459	14, 18, 26, 29
Idaho v. H. D. Morris, 155 Pac. 296	26
In re Jackson, 6 Otto 727, 24 L. Ed. 877, 879	36
Knowles v. U. S., 170 Fed. 409	20
Mashburn v. City of Bloomington, 32 Ill. App. 244 ..	20
McDowell v. Board of Education, 104 N. Y. Misc. 564	20
Meyer v. Nebraska, 262 U. S. 390, 399 (1922)	15, 16
Mugler v. Kansas, 123 U. S. 623 (661)	17
Near v. Minnesota, 283 U. S. 697, 707	36, 38
New v. U. S., 245 Fed. 710, 712	20
People v. Armentrout, 1 Pac. (2d) 556	39
People v. Ashley (184 N. Y. App. Div. 520)	20
People v. Johnson, 117 N. Y. Misc. 133	41

INDEX

Table of Cases Cited

	PAGE
People v. No. 24 Board of Education, 245 Ill. 334, 29 LRA NS 42	27
People v. Pierson, 176 N. Y. 201, 68 NE 243	20
People v. Weiner, 271 Ill. 74, 110 NE 870 (873)	17
People v. Zimmerman, 278 U. S. 63	43
Reynolds v. U. S., 98 U. S. 145	20
St. Louis I. M. & S. Ry. Co. v. Starbird, 243 U. S. 592	43
Smith v. Cahoon, 283 U. S. 553	46
State v. Delaney, 1 N. J. Misc. 619, 122 Atl. 890	25
Stromberg v. Cal., 283 U. S. 359	36
U. S. v. Macintosh, 283 U. S. 605	21, 32
Watson v. Jones, 13 Wall (U. S.) 679, 728	16, 19, 20, 24, 26
Weiss v. District Board, 76 Wis. 177 (212)	12
Yick Wo v. Hopkins, 118 U. S. 356	44

INDEX

Miscellaneous Citations

	PAGE
12 ALR 1436	44, 45
54 ALR 1104	44, 45
Bible	
Acts 3:22, 23	6
Acts 4:19	7
Acts 5:34-39	8
Acts 20:20	5
Acts 24:14	12
1 Corinthians 9:16	4
Isaiah 43:10-12	5
Isaiah 61:1-3	5
John 18:37	5
2 Kings 10:19	12
Luke 20:25	35
Mark 13:9	7
Matthew 10:7-15	5
Matthew 24:14	4, 16
1 Peter 2:21	5, 6
Philippians 3:3	12
Black's Law Dictionary	12
Blackstone Commentaries, Chase 3d ed. 5-7	30
Cooley, Constitutional Limitations, 8th Ed., p. 968	18
p. 1229	17
Fosdick, The Secret of Victorious Living (1934), pp. 99-109	32, 33
Freund, The Police Power, p. 133, Sec. 143	22
2 McQuillan, p. 726, Sec. 764	45
Pacelli, Eugenio Cardinal (Brooklyn Tablet, October 10, 1936)	34
Pope Leo XIII, Encyclical (Boston Pilot, February 15, 1890)	33

INDEX

Miscellaneous Citations

PAGE

Strong, Exhaustive Concordance of the Bible
"Dictionary of the Words in the Greek Testament," p. 44, No. 3000 12

"Dictionary of the Words in the Hebrew Bible," p. 114, No. 7812 12

Statutes Cited

Constitution of Idaho, Article 1 26

Article 20 26

Constitution of New Jersey (preamble) 34

Constitution of Pennsylvania, Article I 23

Constitution of the United States, Fourteenth Amendment 3, 9, 10, 11, 12, 14, 16, 36, 42, 44

Judicial Code, Sec. 237 (28 U. S. C. A. 344) 1

Ordinance of the City of Griffin, Ga. ... 2, 9, 10, 11, 15, 21, 26, 30, 36, 39, 42, 46, 47

IN THE

Supreme Court of the United States

October Term, 1937

No. 391

ALMA LOVELL,
Appellant,
against
CITY OF GRIFFIN,
Appellee.

APPEAL FROM
COURT OF APPEALS OF
STATE OF GEORGIA

APPELLANT'S BRIEF

Opinions Below

The Opinion of the Court of Appeals of the State of Georgia appears at page 16 of the Record, and is reported in 55 Ga. App. 609, 191 S. E. 152. The Opinion of the Court of original jurisdiction (Record page 6) is not reported.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under section 237 of the jurisdictional code (U. S. C. A. Title 28, section 344), which reads as follows: "A final judgment or decree in any suit of the highest court of the state in which a decision in the suit could be had, . . . where is drawn in question the validity of a statute of any state, on the ground of it being repugnant

to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ of error shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may, in its decision, award execution or remand the cause to the court from which it was removed by the writ."

The Appeal Is Timely

The judgment of the Court of Appeals of Georgia was entered on the 11th day of March, 1937. On March 31, 1937, an order was entered by said Court denying a motion for rehearing. On May 18, 1937, the Supreme Court of Georgia entered its final order denying the issuance of a writ of certiorari to review the judgment of the Court of Appeals. The three months period therefore began to run on May 18, 1937, the date of the denial of the petition for a writ of certiorari.

The petition for allowance of an appeal to the United States Supreme Court was presented to Hon. Nash R. Broyles, Chief Judge of the Court of Appeals of Georgia, and was allowed by him on the 13th day of July, 1937.

The Statute

The statute, the validity of which as construed to apply to appellant is here drawn in question, is an ordinance of the City of Griffin, Georgia, which reads as follows:

> Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the city limits of the City of Griffin, with-

out first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin.

Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance.

In holding that the ordinance is not unconstitutional because it abridges the freedom of the press, and interferes with freedom of worship and freedom of religion, in violation of the Fourteenth Amendment to the Constitution of the United States (Record page 16), the Court of Appeals of the State of Georgia applied the ordinance to the appellant and decided in favor of its validity as so applied.

In refusing to pass upon the question that the ordinance denies equal protection of the law because of arbitrary power given to the City Manager to grant or refuse a license at will, the validity of the ordinance is drawn in question, and the decision of the Court of Appeals was in favor of its validity.

Statement

On June 29, 1936, appellant was tried and convicted in the Recorder's Court for the City of Griffin for violation of the ordinance herein quoted. She was adjudged guilty and was sentenced to fifty days in jail in default of payment of a fine of $50.00.

A police officer saw the appellant hand a pamphlet to a resident of Griffin and thereupon arrested her. Appellant admitted that she distributed literature and further testified as follows:

I am consecrated to Jehovah God and worship God in spirit and in truth, am an ordained minister of Jehovah God, sent forth by His command to preach the gospel of God's kingdom under Christ Jesus, and am therefore one of Jehovah's witnesses. I worship Almighty God by obeying His commandments to go from place to place and tell others of God and His kingdom. My work as such minister is done under the direction of the Watch Tower Bible & Tract Society, which is a corporation organized under the laws of Pennsylvania, the chartered purpose being as follows:

> "The purpose for which the corporation is formed is the dissemination of Bible truths in various languages by means of the publication of tracts, pamphlets, papers, and other religious documents, and by the use of all other lawful means which its Board of Directors, duly constituted, shall deem expedient for the furtherance of the purpose stated."

At the time of my arrest I was engaged in preaching the gospel of God's kingdom. This gospel concerns the kingdom for which people have prayed for centuries, that the will of God might be done on earth as it is done in heaven. We bring to the people the proofs that the time is at hand for the establishment of the kingdom of Jehovah God. The present disturbed condition of the nations, with the perplexity and distress prevailing among the people, are among the evidences that Satan's rule over the earth is nearing its end, and will be followed by God's kingdom which will bring righteousness and peace to all people who are willing to hear and obey Almighty God.

I was doing this work in obedience to God's law which says, "And this gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come." (Matthew 24:14) I am a Christian and have entered into a covenant or agreement to do the will of God and obey His commandments. Therefore it is incumbent upon me to obey His mandate to preach the gospel. "For necessity is laid upon me; yea, woe is unto me, if I preach not the gospel!" (1 Corinthians 9:16) Other commands

to preach are found in the Bible at Isaiah 61:1-3, Isaiah 43:10-12, John 18:37, and 1 Peter 2:21, which are as follows:

"The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek: he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn; to appoint unto them that mourn in Zion, to give unto them beauty for ashes, the oil of joy for mourning, the garment of praise for the spirit of heaviness; that they might be called trees of righteousness, the planting of the Lord, that he might be glorified."

"Ye are my witnesses, saith the Lord, and my servant whom I have chosen; that ye may know and believe me, and understand that I am he: before me there was no God formed, neither shall there be after me. I, even I, am the Lord; and beside me there is no saviour. I have declared, and have saved, and I have shewed, when there was no strange god among you: therefore ye are my witnesses, saith the Lord, that I am God."

"Pilate therefore said unto him, Art thou a king then? Jesus answered, Thou sayest that I am a king. To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth. Every one that is of the truth heareth my voice."

"For even hereunto were ye called: because Christ also suffered for us, leaving us an example, that ye should follow his steps."

I was going from house to house just as Christ Jesus and His disciples did. (Matthew 10:7-15; Acts 20:20)

"And, as ye go, preach, saying, The kingdom of heaven is at hand. Heal the sick, cleanse the lepers, raise the dead, cast out devils; freely ye have re-

ceived, freely give. Provide neither gold, nor silver, nor brass in your purses; nor scrip for your journey, neither two coats, neither shoes, nor yet staves; for the workman is worthy of his meat. And into whatsoever city or town ye shall enter, inquire who in it is worthy; and there abide till ye go thence. And when ye come into an house, salute it. And if the house be worthy, let your peace come upon it: but if it be not worthy, let your peace return to you. And whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet. Verily I say unto you, It shall be more tolerable for the land of Sodom and Gomorrah in the day of judgment, than for that city."

"And how I kept back nothing that was profitable unto you, but have shewed you, and have taught you publicly, and from house to house."

I am commanded by God's Word to follow in the footsteps of Jesus and preach the gospel as He did. (1 Peter 2:21)

"For even hereunto were ye called: because Christ also suffered for us, leaving us an example, that ye should follow his steps."

If I did not obey these commandments, I would in due time be eternally destroyed. (Acts 3:22, 23)

"For Moses truly said unto the fathers, A prophet shall the Lord your God raise up unto you of your brethren, like unto me; him shall ye hear in all things whatsoever he shall say unto you. And it shall come to pass, that every soul, which will not hear that prophet, shall be destroyed from among the people."

I offer in evidence the Word of God, the Bible.

At the time of my arrest I had been calling on people at their homes. I told them about the kingdom of Jehovah. I displayed to them books and booklets which explain the gospel of the Kingdom, and gave them opportunity to secure this printed message. I further offered the people invitations to hear the Kingdom message over the radio.

The act for which I was arrested was an act of worship of Almighty God. Preaching the gospel is part of my sincere worship of Jehovah. To worship doesn't mean to go to church or go through some religious ceremony. It does mean to obey and serve God because of unselfish love and devotion to Him. I was thus worshiping God as commanded in His Word and in accordance with the dictates of my conscience.

I did not ask for a permit, because I am sent by Jehovah to do His work. His law is supreme and above every human law. To apply for a permit to do His work would be an act of disobedience to His commandment. It would be an insult to the Most High which would in time result in my eternal destruction.

I am very willing to obey all laws which do not conflict with the law of God. I am commanded in the Bible to 'render unto Caesar [the worldly governments] the things which be Caesar's, and unto God the things which be God's'. By preaching the gospel of God's kingdom from house to house I am rendering unto God the things which be God's, and no earthly power can rightly interfere with my so doing.

The Bible plainly points out that cases similar to this one now before this court would arise in these present days, because, in Mark 13:9, as an admonition to Jehovah's witnesses, are written these words:

> "But take heed to yourselves: for they shall deliver you up to councils [courts]; and in the synagogues ye shall be beaten; and ye shall be brought before rulers and kings for my sake, for a testimony against them."

The question at issue is not a new one. The early disciples of Jesus were brought into court on a charge identical with the one before this court. The disciples Peter and John were the defendants in that case, and it is recorded, in Acts 4:19, that they answered the court in these words:

> "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye."

When again these two disciples were brought into court on a like charge, a member of that court gave wise counsel to his fellow members of the council, and his language is recorded at Acts 5:34-39, to wit:

> "Then stood there up one in the council, a Pharisee, named Gamaliel, a doctor of the law, had in reputation among all the people, and commanded to put the apostles forth a little space; and said unto them, Ye men of Israel, take heed to yourselves what ye intend to do as touching these men. For before these days rose up Theudas, boasting himself to be somebody; to whom a number of men, about four hundred, joined themselves: who was slain; and all, as many as obeyed him, were scattered, and brought to nought. After this man, rose up Judas of Galilee, in the days of the taxing, and drew away much people after him: he also perished; and all, even as many as obeyed him, were dispersed. And now I say unto you, Refrain from these men, and let them alone: for if this counsel or this work be of men it will come to nought: but if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God."

As a defendant before this court I stand exactly in this position, and freely admit that at the time of being arrested I was going from house to house, preaching the gospel of Jehovah's kingdom by means of exhibiting to the people that gospel message in printed form. The State is expressly estopped from interfering with this work, by virtue of the fundamental law of the State and the nation. If the state or municipality has no legal right to interfere with such preaching of the gospel, then manifestly no one of the state or municipality could have any right or authority to issue a permit to do this very thing.

I must obey Jehovah God's law because it is superior to any law that man can make; and if the court insists upon inflicting punishment upon me because I am obeying God, then the court must take the responsibility before Jehovah God. I therefore submit my case. (Record pages 9-14)

Questions Presented

Federal questions were properly raised, and were decided adversely to the appellant.

1. Whether the ordinance of the City of Griffin here involved, as construed and applied by the Court of Appeals of the State of Georgia, unreasonably restricts and denies appellant's freedom of worship and free exercise of religion, and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

2. Whether the ordinance of the City of Griffin here involved, as construed and applied by the Court of Appeals of the State of Georgia, unreasonably restricts and denies appellant's freedom of speech and freedom of press and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

3. Whether the ordinance of the City of Griffin here involved denies to appellant the equal protection of laws, and liberty and property without due process of law, in that it requires appellant to secure written permission from the City Manager of the City of Griffin to distribute literature of any kind, and places it within the arbitrary and uncontrolled power and discretion of said official to issue such permit, and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

Specification of Errors to Be Urged

Appellant assigns the following errors in the record and proceedings in the said case:

The court below erred in holding that the ordinance of the City of Griffin here involved is not void by reason of the fact that it is in conflict with Section One of the Fourteenth Amendment to the United States Constitution in the following particulars, to wit:

(a) It denies and unduly restricts the right to worship Almighty God according to the dictates of conscience.

(b) It denies and unduly restricts the free exercise of religious belief and practice.

(c) It denies and unduly restricts freedom of speech and freedom of press.

(d) It denies liberty and the equal protection of the law.

Points for Argument

POINT I

The ordinance as construed and applied denies and unduly restricts appellant's right to worship Almighty God in accordance with the dictates of conscience.

(A) The right to religious freedom is included within the rights guaranteed under the Fourteenth Amendment to the United States Constitution.

(B) The municipality must justify any restriction on religious freedom by showing that the acts complained of violated the laws of morality, or property; infringed on personal rights, or are inimical to the safety of the state.

(C) There is no justification for application of the ordinance to the activities charged against the appellant.

(D) The application of the ordinance is invalid because no purpose of action against Christianity may be imputed to any statute.

(E) The application of the ordinance is invalid because it may not be assumed that it was within

the intention of the Board of Commissioners to enact legislation contravening the law of Almighty God.

POINT II

The ordinance in itself and as construed and applied by the Court of Appeals of the State of Georgia unreasonably restricts and denies freedom of speech and freedom of press and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

(A) Freedom of speech and freedom of press is guaranteed under the Fourteenth Amendment to the United States Constitution.

(B) The application of the ordinance is invalid because the City of Griffin did not justify such restriction and denial of free speech and free press by showing that the acts complained of were inimical to public welfare, contrary to public morals, or that they jeopardized the safety of the state.

POINT III

The Griffin ordinance in itself, and as construed and applied by the Court of Appeals of the State of Georgia, denies liberty and the equal protection of the law through the arbitrary and uncontrolled power given to the City Manager to issue permits for distribution of printed matter, and is therefore invalid under Section One of the

Fourteenth Amendment to the United States Constitution.

Summary of Appellant's Argument

Appellant is an ordained minister of Jehovah God, who at the time of her arrest was engaged in preaching the gospel from house to house in the City of Griffin. This preaching constituted an act of worship of Almighty God because done in obedience to His commandments.

The word "worship" as used in the Bible means to render service, to do service, to minister, to act as a servant. It is so used in the following places:

> "For we are the circumcision which *worship* God in the spirit."—Philippians 3:3.
>
> "But this I confess unto thee, that after the way which they call heresy, so *worship* I the God of my fathers."—Acts 24:14.

See Dr. James Strong, S.T.D., LL.D., *Exhaustive Concordance of the Bible,* "Dictionary of the Words in the Greek Testament," page 44, No. 3000.

The word "worshippers" at 2 Kings 10:19 denotes *workers* or *servants* of a heathen god. See Dr. James Strong's *Concordance,* "Dictionary of the Words in the Hebrew Bible," page 114, No. 7812.

Black's *Law Dictionary* defines "worship" as the offering of honor and adoration to the Divine Being. The Wisconsin Supreme Court states that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience.* Weiss v. District Board et al., 76 Wis. 177 (212).

Is it not reasonable then to conclude that "worship of Almighty God" means to be obedient to His commandments

and to serve Him, which service is prompted by unselfish devotion to Him.

In the appellant's testimony the commands of Almighty God to preach the gospel are set forth. The appellant engaging in such work of preaching the gospel in obedience to such commands was then engaged in the actual worship of Almighty God. The method appeals to the conscience of appellant because of the Divine mandate to preach the gospel from place to place and house to house. The appellant conscientiously believes that supreme obedience belongs to Almighty God; that she would be denying that supreme obedience to the Creator if she first asked any municipal authority for a permit or license to do what Almighty God commands her to do, and would therefore, in due time, be eternally destroyed.

Her work of ministry is unduly restricted by the Griffin ordinance. It requires her to secure a permit from the City Manager, to be issued in his discretion, to distribute any Biblical literature in Griffin. Should she desire to pass out a few copies of the Bible gratis she would be subject to the ordinance. She was arrested because she passed out some Biblical literature and a copy of a magazine to the people. This restriction constitutes a denial of the right to worship Almighty God in accordance with the dictates of conscience, for appellant conscientiously claims to be Divinely commanded to preach the gospel of Jehovah's kingdom, and it would be an act of disobedience to this command to apply to a municipal official for permission to do what the Creator of the universe commands to be done.

Freedom of worship and freedom of religion is fully guaranteed under the United States Constitution, when it does not violate the laws of morality, or property, or infringe on personal rights, or jeopardize the safety of the state. Therefore the restrictions placed on appellant's worship and Christian practice cannot be legal except the municipality justify such restriction by showing that the

acts complained of do violate the laws of morality, or property, or infringe on personal rights, or jeopardize the safety of the state. The appellee has not justified such restriction, and the ordinance as construed and applied by the Georgia Court of Appeals is invalid under the due process clause of the Fourteenth Amendment of the United States Constitution.

In the case of Holy Trinity Church v. U. S., 143 U.S. 457, this court ruled that "no purpose of action against religion can be imputed to any legislation, state or national . . . " The same case rules that the United States is a Christian nation. Therefore it may not be assumed that the Board of Commissioners of the City of Griffin intended to impute action against the Christian work engaged in by this appellant.

Blackstone has well stated the fundamental proposition that no human laws are of any validity if contrary to the Divine law. Appellant was arrested and convicted for obeying the Divine mandate to give witness to the name of Jehovah God. It may not be assumed that the Board of Commissioners of the City of Griffin intended to contravene the Supreme Law of the Creator. The Board is estopped from so doing.

The ordinance restricts freedom of speech and freedom of press. Freedom of speech and press covers the rights of expression, publication and circulation. The right to circulate published expressions is limited to those who can secure permission of the City Manager. Such restriction on speech and press is not valid unless the municipality justifies the need in a "reasonable apprehension of danger to organized government". Herndon v. Lowry, 301 U. S. 242.

The ordinance denies equal protection of the law and liberty. This is due to the absolute powers given to the City Manager to issue or refuse a permit in his discretion. In that respect the only security citizens have is the good

sense and honesty of the official. Government then becomes an affair of men and not of law.

Argument

POINT I

The ordinance as construed and applied denies and unduly restricts appellant's right to worship Almighty God in accordance with the dictates of conscience.

The Georgia Court of Appeals in its decision relied upon the decision in a similar case, to wit, that of Coleman v. Griffin, 55 Ga. App. 123 (189 SE 427). In that decision the court held that the city had the right and power to enact the ordinance and that it did not interfere with any man's religious belief. It stated:

> "A man's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the laws of the city."

The ordinance as thus construed becomes supreme. Religious beliefs are protected, but no religious *practice* is permitted which comes in conflict with a city ordinance. The veneration of images is a religious practice in some denominations. This is prohibited in Communistic Russia. It could be prohibited in Georgia under the construction of religious freedom made by the Georgia Court of Appeals.

A

The right to religious freedom is guaranteed under the Fourteenth Amendment to the United States Constitution.

Hamilton v. Regents, 293 U. S. 245;
Meyer v. Nebraska, 262 U. S. 390.

The Fourteenth Amendment to the United States Constitution does not merely denote freedom from bodily restraint, " . . . but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, *to worship God according to the dictates of his own conscience,* and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." (Italics ours)

Meyer v. Nebraska, 262 U. S. 390, 399 (1922).

The extent of this freedom is well stated by this court in the following words:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights is conceded to all. The law knows no heresy; is committed to the support of no dogma; the establishment of no sect." Watson v. Jones, 13 Wall (U. S.) 679, 728.

It is to be noted that this covers not only freedom of religious belief but also freedom of religious practice and the right to teach religious doctrines.

We agree with the Georgia Court of Appeals that the ordinance "interferes with no man's religious *belief*". It does, however, interfere with the practice of the Biblical principle: "And this gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come." (Matthew 24:14) (Record page 10) It does contravene the right to teach from house to house as the Master did (Record page 11) by causing that right to be submitted to the whim and fancy of the City Manager of Griffin.

Appellant concedes the right and authority of the municipality to enact ordinances, within delegated authority,

for the regulation of trades and callings, and for the protection of society, but maintains that such must be reasonable and must not infringe upon the inherent and natural rights of citizens under the common law and as guaranted by the state and federal constitutions, and affecting life, liberty and pursuit of happiness. While the police power must be plenary in its nature or degree, yet it must not be overlooked that this power rests in the people and it is bestowed upon their agents as a grant of authority for the purpose of protecting the health, the safety, the comfort, and the welfare of the public. Judge Cooley stated with much emphasis that "this power is subject to the limitations imposed by the federal and state constitutions upon every power of government, and will not be suffered to invade or impair the *fundamental liberties of the citizen*", *Constitutional Limitations*, p. 1229 (8th Ed.).

We present a few of the declarations in general terms on this subject of preservation of fundamental rights.

> "Under the federal and state Constitutions the individual may pursue, *without let or hindrance*, all such callings or pursuits as are innocent in themselves and not injurious to the public. These are fundamental rights of every person living under this government, and the legislature by its enactments cannot interfere with such rights." (People v. Weiner, 271 Ill. 74, 110 NE 870 (873))

In Mugler v. Kansas, 123 U. S. 623 (661), in delivering the opinion of the court, Mr. Justice Harlan said:

> "The courts are not bound by mere forms, nor are they to be misled by mere pretences. They are at liberty,—indeed, are under a solemn duty to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no

> real or *substantial relation to those subjects,* or is a palpable invasion of rights secured by fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the constitution."

No state or municipality has the right to place itself between the individual and Almighty God when such individual is engaged in a conscientious act of worship. On this point we quote from Cooley's *Constitutional Limitations* (8th Ed.), page 968:

> "No external authority is to place itself between the finite being and the Infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

In Holy Trinity Church v. U. S., 143 U. S. 457, at page 459, in discussing the case as to its religious bearing, Mr. Justice Brewer said:

> "But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people,"

and he adds,

> "This is historically true. From the discovery of this continent to this present hour, there is a single voice making this affirmation."

An analysis of the decisions above cited convinces one that the domain of religious freedom is sacred. The legislative body if it enters therein must enter with fear and trembling. It cannot come between the finite creature and the Infinite Creator when said creature is endeavoring to offer homage and worship to Almighty God in a manner approved by conscience and in conformity with the written law of the Creator. Unnecessary restrictions of religion are absolutely invalid. The individual has the supreme

right to engage in any religious practice or entertain any religious belief, unless by so doing he violates the laws of morality, or the laws of property, or infringes on personal rights.

In the case before us we have an ordinance, which as applied, construed and enforced against the appellant prohibits her worship of Almighty God in the manner conscience approves, and restricts her Christian activity. It requires her to obtain permission to render homage and worship in the manner she was doing at the time of her arrest. It subjects her Divinely commissioned work to the approval of the City Manager.

B

The municipality must justify any restriction on religious freedom by showing that the acts complained of violate the laws of morality or of property, infringe on personal rights, or are inimical to the safety of the state.

This is the rule laid down in Watson v. Jones, *supra.*

It is no violation of the laws of morality to call on people at their homes and interview them concerning Jehovah's kingdom. It is not violating the laws of property to call on people at their homes and offer them printed matter containing information concerning the Bible and the purposes of Almighty God therein written. It certainly cannot be said to infringe on anyone's personal rights to bring to them the good tidings this appellant claims to be contained in the written Word of the ever-living God, Jehovah. And there is no danger to the state from such activity.

Where, then, can there be any justification for the restrictions placed on the Christian activities of this appellant?

The courts of many states have passed frequently on the question of what constitutes reasonable restriction under the police power. An examination of those decisions will disclose that in cases where there has been a

restriction of religious freedom it has come within the exception stated in Watson v. Jones, *supra*. The courts have held that when some person or organization violated the laws of morality, or property, or trespassed on personal rights, they could not justify their actions on the ground of religious freedom. A few of such decisions are cited:

Reynolds v. U. S., 98 U. S. 145;

Davis v. Beason, 133 U. S. 333, 342.

These are leading cases in which the guarantee of religious freedom was invoked. They involved Mormons who attempted to justify plural marriage on the grounds of religious freedom. This constituted a violation of the laws of morality and their contentions were not sustained.

Knowles v. U. S., 170 Fed. 409.

The right to mail birth control information was raised in this case. That also involved a violation of the laws of morality.

Personal rights of individuals were involved in the following case:

People v. Pierson, 176 N. Y. 201, 68 NE 243.

Question of the right to medical attention was involved in this case:

McDowell v. Board of Education of N. Y., 104 N. Y. Misc. 564.

Interference with right of safety of people on the streets by street meetings and bands of Salvation Army, etc., was raised in the following cases:

Mashburn v. City of Bloomington, 32 Ill. App. 244;

Commonwealth v. Plaisted, 148 Mass. 375, 19 NE 224, 226.

In the next two cases the claim of spiritualists to certain rights as a religious group was raised, but overruled by the courts largely because the court apparently considered the claims were not sincere.

New v. U. S., 245 Fed. 710, 712;

People v. Ashley (184 N. Y. App. Div. 520).

A religious group called Dukhobors have frequently considered it their religious duty to parade in the nude and have been stopped by the authorities. We do not know of any cases of this organization that reached the upper courts, but undoubtedly the same reasoning would apply. They would be prohibited from using their religious prerogatives to parade minus clothing because such would be a violation of the law of morality.

In Hamilton v. Regents, 293 U. S. 245, the question of the defense of country and safety of the state was involved.

In the citizenship case (U. S. v. Macintosh, 283 U. S. 605) the safety of the state through its right to call to arms its citizenry was involved.

Thus in practically all cases where the claims of religious freedom have been held subservient to some legislative act it has been because the acts involved came within the exception stated. In the very few state decisions in which there has been a denial of religious freedom despite failure to come within the exception, it is submitted that such decisions are contrary to the spirit and purpose of the fundamental law and the rulings of this court.

C

There is no justification for application of the ordinance to the activities charged against the appellant.

The Georgia Court of Appeals in construing and applying the ordinance to the work of the appellant made no effort to justify such application beyond the decree that a man's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the laws of the community. Such construction constitutes a complete denial of religious freedom. Of what advantage is it to have the right to believe a religious principle if you cannot act in accordance with that principle? Where is religious freedom if one entertaining a sincere religious belief may be prohibited by law from teaching such belief? A law in Georgia is all that is necessary to annihilate a

religious practice or the right to teach a religious doctrine. Let a rabid, intolerant opponent of any religious group assume the position of City Manager of Griffin and it will be impossible for any minister, or priest, or parish worker of such group to pass out prayer books, Bibles or other literature of his denomination within the limits of the municipality. If this construction be upheld as the law of the land, then in any state an anti-religious legislative body could throttle religious practice and teaching with constitutional approval. It could prohibit churches from operating; prohibit religious ceremonies, and public teaching of the Bible. There would still be religious freedom in that all could *believe* as they see fit but would have to keep still about it. Hitler and Stalin have not yet controlled the thoughts and beliefs of the people, although they do prohibit teaching of certain religious doctrines and certain religious practices.

It is submitted that the construction of this ordinance by the Georgia Court of Appeals is a dangerous and subtle innovation which can and may be used to destroy the religious freedom of all people.

The burden is on the State to justify its exercise of the police power in a particular instance. When the person assailing a law on constitutional grounds has shown a *prima facie* violation of a constitutional right, the State must then prove that the infringement is justified to protect the "health, safety or public morals" of the people.

The problems involved in determining whether a particular law is within the police power of the State are well summarized in Freund's work on "The Police Power", Page 133, Sec. 143, where he states:

> "The questions which present themselves in the examination of a safety or health measure are: does a danger exist? is it of sufficient magnitude? does it concern the public? does the proposed measure tend to remove it? is the restraint or requirement in proportion to the danger? is it possible to secure the object

> sought without impairing essential rights and principles? does the choice of a particular measure show that some other interest than safety or health was the actual motive of legislation?"

Let the proponents of the Griffin form of denial of the right of Christian activity support their argument by showing the imminent public danger, or rights involved, necessitating the infringement of constitutional rights. Let them justify the infringement through proving that preaching the gospel from house to house violates the laws of morality, or of property; or infringes on personal rights; or is inimical to the safety of the state. This they must do to satisfy the requirement that the law is a fair exercise of the police power of the state.

Turning to the cases in which courts have held that restrictions on religious freedom are unreasonable, we find the following:

> Gobitis v. Minersville School District et al, decided December 1, 1937, by the U. S. District Court of the Eastern District of Pennsylvania. [Volume and page of official report are not available at time of writing this brief.]

Two children had been expelled from the Minersville, Pennsylvania, Public Schools for refusal to participate in the school flag-saluting exercises. This refusal was based on religious grounds in that the children considered it contrary to the law of God to salute any flag. The Court held that the school-board requirement to salute the flag as a prerequisite to attendance at classes was an infringement on the liberty guaranteed them by the Fourteenth Amendment. The following is cited from the opinion:

> "Section 3 of Art. I of the Constitution of Pennsylvania provides that 'All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; . . . no human authority can, in any case whatever, control or inter-

fere with the rights of conscience. . . . ' This is but the expression of the full and free right which, as Mr. Justice Miller said in Watson v. Jones, 80 U. S. 679, in this country is conceded to all 'to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights'.

"The right of conscience referred to in the Pennsylvania Constitution was defined by Chief Justice Gibson in Commonwealth v. Lesher, 17 S. & R. 155, to be 'a right to worship the Supreme Being according to the dictates of the heart; to adopt any creed or hold any opinion whatever on the subject of religion; and to do, or forbear to do, any act for conscience' sake, the doing or forbearing [to do] of which, is not prejudicial to the public weal'. In these words that eminent jurist clearly stated the principle which underlies the constitutional provisions of all the States and which is one of the fundamental bases upon which our Nation was founded, namely, that individuals have the right not only to entertain any religious belief but also to do or refrain from doing any act on conscientious grounds, which does not prejudice the safety, morals, property or personal rights of the people.

"In applying this principle it is obvious that the individual concerned must be the judge of the validity of his own religious beliefs. Liberty of conscience means liberty for each individual to decide for himself what is to him religious. If an individual sincerely bases his acts or refusals to act on religious grounds they must be accepted as such and may only be interfered with if it becomes necessary to do so in connection with the exercise of the police power, that is, if it appears that the public safety, health or morals or property or personal rights will be prejudiced by them. To permit public officers to determine whether the views of individuals sincerely held and their acts sincerely undertaken on religious grounds are in fact based on convictions religious in character would be to sound the death knell of religious liberty. To such a pernicious and alien doctrine this court cannot subscribe."

State v. Delaney, 1 N. J. Misc. 619, 122 Atlantic 890.

Mary Delaney was found guilty of telling fortunes, under a disorderly conduct statute. She was a spiritualist medium and held forth at the First Spiritualist Church in Camden. For the sum of 25 cents she would foretell events. She received pay for her services. The church charter authorized it to practice the religion of Spiritualism.

In the Supreme Court of New Jersey the conviction was set aside on the grounds of a defective complaint. But the court also held:

> "Perhaps it should be said that the offense alleged is in fact the participation in religious services. The federal and state constitutions guarantee to all citizens religious liberty. This guaranty includes the right to entertain any religious belief, or practice any religious doctrine not infringing personal rights or violating the laws of morality and property.
>
> "The Disorderly Conduct Act cannot in my opinion be construed so as to make the acts with which the defendant was charged offenses under the act."

It is submitted that the present case is an exact parallel of the Delaney case.

VIOLATION:

Delaney: Violation of Disorderly Conduct Act.
Present case: Violation of Griffin ordinance.

DEFENSE:

Delaney: Participation in religious services.
Present case: Participation in religious services.

HOLDING:

Delaney: Disorderly Conduct Act cannot be construed to make the acts of the defendant offenses under the act.

Present case: The court may well follow the logic of the Delaney case and hold that the Griffin or-

> dinance cannot be construed to make the acts of the defendant offenses under the ordinance.

Another case showing the proper method of construing ordinances is that of the State of Idaho v. H. D. Morris, 155 Pacific 296.

Defendant in this case was arrested for violating a statute prohibiting the operating of motion picture shows on Sunday. Defendant presented on Sunday at a movie house a religious picture entitled "The Photo-Drama of Creation". The Idaho Supreme Court held:

> "To place upon the statute under consideration the construction asked for by appellant, and to hold that the use of a motion picture machine on Sunday for the purpose to which it was put by the respondent and his associates, in keeping open or operating a motion picture show in violation of the statute would be to *improperly invoke the police power* of the state.
>
> . . .
>
> "Such a construction would also bring the statute into conflict with Section 4, Article 1, and Section 19, Article 20, of the Constitution, for thereby religious liberty would be denied."

Other state decisions which have upheld restrictions on religious practices regardless of justification therefor cannot be reconciled with constitutional principles of religious freedom. If they are correct, Watson v. Jones, Church v. U. S., and similar cases are wrong, and religious liberty is such in name only.

D

The application of the ordinance is invalid because no purpose of action against Christianity may be imputed to any statute.

In the case of Church v. U. S., 143 U. S. 457; 36 Law Ed. 226, this court makes a careful examination of authori-

ties back to the time of the discovery of this continent, and makes the following positive finding:

> "These and many other matters which might be noticed add a volume of unofficial declarations to the mass of organic utterances *that this is a Christian nation.*" (Italics ours)

In the face of this declaration shall it be believed that a municipal legislative body intended to make it a nuisance to disseminate the Christian gospel from house to house without the august permission of a city official?

The decree is no *obiter dictum,* but a deliberate finding made upon careful examination and analysis of authorities. Other courts have made similar declarations. The Supreme Court of Illinois has decided that Illinois is a Christian state and that "the Bible is the inspired Word of God; that the Creator of the universe is its author". People v. No. 24 Board of Education, 245 Ill. 334; 29 LRA NS 42.

Defendant in the Church case was charged with violation of the Immigration Law prohibiting the hiring of alien labor. Defendant Holy Trinity Church contracted with a preacher residing in England to enter its service as rector and pastor, and was prosecuted under said Immigration Act. There was no question that the defendant violated the letter of the law. The court so found but said further:

> "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers."

The court also quoted Lord Coke as follows:

> "'Acts of Parliament are to be so construed as no man that is innocent or free from injury or wrong be, by a literal construction, punished or endangered.'"

> "The construction invoked (that of the application of laws against importation of foreign labor to a minister of the gospel of foreign citizenship coming to serve a congregation in this country) cannot be accepted as correct. It is a case where there was present a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil, and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute."

The commandments of Jehovah God and Christ Jesus to His people are to preach the gospel; to preach it from place to place and house to house. This is binding on all who have entered into a covenant to do the will of Jehovah, which includes the appellant. This means all who are true and sincere Christians. All of them must preach the gospel. Can any municipality then honestly claim to be Christian and enact or apply legislation to circumscribe, prohibit, or regulate the acts of those who are obeying the dictates of Christianity? Can the nation still honestly claim to be Christian and permit any subdivision thereof to interfere with the right of Christians to worship Jehovah in the manner approved by Him according to His written law? It is obvious that they cannot honestly and consistently make such claims and still apply man-made laws and ordinances in such manner as to interfere with the carrying on of a Christian work. They should either cease to make claims of being Christian or cease interfering with a Christian work.

We submit that it must be presumed that the legislative body of the appellee municipality in enacting the ordinance herein involved had in contemplation no act which

would violate the tenets of Christianity or militate against the people's exercising their right to serve Jehovah God and Christ Jesus as commanded. To hold that a legislative body can enact legislation which violates the will of Jehovah God as revealed in the Scriptures, and to hold that such legislation can be lawfully enforced, and that the state and nation can nevertheless remain Christian, is a sheer absurdity.

It would be tantamount to holding that the legislative body could, by simply enacting an ordinance, nullify the command of Jehovah God and Christ Jesus; and would give to every such body what would practically amount to a veto power over any and all decrees of the Almighty God as laid down in His Word, the Scriptures. That such a thing can be done, and the nation or state remain Christian, is impossible and logically inconceivable.

It therefore must be presumed, as a matter of legal conclusion, that the legislative body of the appellee municipality, being reasonable and not absurd, did not intend that this ordinance should apply to persons conscientiously and peaceably executing the mandate of Jehovah God to preach the gospel of the kingdom of God under His Son Jesus Christ. It must be presumed that this ordinance is limited in its application strictly to commercial transactions, and hence that the ordinance has no application whatsoever to the appellant.

That the lawmaking body is presumed to limit such ordinance to commercial transactions is emphatically and decisively determined by the words of Mr. Justice Brewer in Church v. U. S., above cited, to wit:

> "But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or nation, because this is a religious nation. This is historically true. From the discovery of the continent to the present hour there is a single voice making this assertion."

E

The application of the ordinance is invalid because it may not be assumed that it was within the intention of the Board of Commissioners to enact legislation contravening the law of Almighty God.

Blackstone, the leading exponent of the common law, states with precision and clarity the relation of the statute law to the higher law of the Creator. The law of man is definitely and explicitly stated to be subject to such higher law. We quote:

> "Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. A being independent of any other being has no rule to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him on whom he depends as the rule of his conduct. This principle therefore has more or less extent and effect in proportion as the superiority of the one, and the dependence of the other, is greater or less, absolute or limited, and consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will."
>
> . . .
>
> "The will of his Maker is called the law of nature."
>
> . . .
>
> "This law of nature, being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other. It is binding over all the globe, in all countries, at all times. *No human laws are of any validity if contrary to this;* and such of them as are valid derive all their force and all their authority, mediately or immediately, from the original.
>
> "But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason, whose office is to discover, as was

before observed, what the law of nature directs in every walk of life, by considering what method will tend the most effectively to our own substantial happiness. And if our reasons were always, as in our first ancestor before his transgression, clear and perfect, unruffled by passion, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy. But every man now finds the contrary in his own experience; that his reason is corrupt and his understanding full of ignorance and error.

"This has given manifold occasion for the benign interposition of Divine Providence, which, in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased at sundry times and in divers manners to discover and enforce its laws by an immediate and direct revelation. The doctrines thus discovered, we call the revealed or divine law, *and they are to be found only in the Holy Scriptures.*

"Upon these two foundations, the law of nature, and the law of revelation, depend all human laws. *That is to say no human laws should be suffered to contradict these.* There are, it is true, a great number of indifferent points in which the natural and the divine law leave man at his own liberty, but which are found necessary for the benefit of society to be restrained within certain limits. And herein it is that human laws have their greatest force and efficiency, for with regard to such points as are not indifferent, human laws are only declaratory of and act in subordination to the former. For instance in the case of murder. This is expressly forbidden by the divine law and demonstrably by the natural law; and from these prohibitions arise the true unlawfulness of the crime. Those human laws that annex a punishment to it do not at all increase the moral guilt or superadd any fresh obligation *in foro conscientiae,* to abstain from its perpetration. Nay, if any human law should enjoin or allow us to commit it, *we are bound to transgress the human law, or else we must offend both the natural and the divine."* — *Blackstone Commentaries,* Chase 3d ed. 5-7.

We know of no decision, ruling, statute or ordinance that has reversed or limited this clear and lucid explanation by Blackstone. Down through the ages the statesmen and lawmakers have recognized these principles. The language of the dissenting justices in U. S. v. Macintosh, 283 U. S. 605, is appropriate and in point, to wit:

> "Much has been said of the paramount duty to the state, a duty to be recognized, it is urged, even though it conflicts with convictions of duty to God. Undoubtedly that duty to the state exists within the domain of power, for Government may enforce obedience to laws regardless of scruples. When one's belief collides with the power of the state, the latter is supreme within its sphere and submission or punishment follows. But, in the forum of conscience, duty to a moral power higher than the state has always been maintained. The reservation of that supreme obligation, as a matter of principle, would unquestionably be made by many of our conscientious and law-abiding citizens. The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation. As was stated by Mr. Justice Field, in Davis v. Beason, 133 U. S. 333, 342, 'The term "religion" has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his character, and of obedience to his will.' One cannot speak of religious liberty, with the proper appreciation of its essential and historic significance, without assuming the existence of a belief in a supreme allegiance to the will of God."

Religious denominations have spoken in similar vein. Harry Emerson Fosdick presents a Protestant viewpoint on the subject of the supremacy of the Divine Law, when he tells of the resolve of 13,000 Protestant clergymen to resist any proscription of the Divine Law "Thou shalt not kill", in the following words:

> " . . . Recently twenty thousand American ministers of religion answered a questionnaire, and of that number nearly thirteen thousand said that they would

never sanction or, as armed combatants, participate in another war. Surely, that indicates a movement of thought and feeling in the religious community which at least we ought to understand. What, then, are these thirteen thousand ministers driving at?

"Some would wish it said at once that they are recovering one of the original meanings of discipleship to Jesus. . . . Now when war comes, a whole nation is fought against, so the whole nation has to fight; therefore conscription—conscription of our bodies, of our sons, in the next war, one way or another, of our daughters, of our property and, through all and climaxing all, of our consciences. It is here we dig in our heels. Our forefathers went to the lions rather than burn incense of worship before Caesar. If need be, we will follow in their train. We have watched this principle of conscription under the dire necessities of modern war creep up on us, here a little and there a little, until it invades the very sanctuary of a man's soul and seizes what belongs to God alone, his conscience. . . . We have seen with our own eyes what it means to dress a minister of Jesus Christ in uniform and send him out, even as a chaplain with the armies, not merely to do what so many suppose, serve individual wounded men in spiritual need—if that were all, there would be no question—but, as well, to bless in the name of Christ this monstrous war system, to urge men, with every Christian admonition he can think of, to the most dastardly deeds human nature is capable of as being the will of God, to put the seal of Christ's approval on the worst enemy of the human race. We mean precisely what we say: We will meet you in prison first."

Fosdick: *The Secret of Victorious Living* (1934), pages 99-109. . . .

The Catholic belief is presented as follows:

"It is an impious deed to break the laws of Jesus Christ for the purpose of obeying the magistrates . . . under the pretext of obeying the civil law." — Encyclical of Pope Leo XIII.

(Quoted from Boston *Pilot* of February 15, 1890)

> "The Church cannot refrain from reminding the people and those who govern them of their duty to submit without reserve, not only in private life, but also in public life, to the supreme dominion of God, and to the majesty of the divine law, natural and positive, *which takes precedence over all human legislation.*"—Eugenio Cardinal Pacelli.
>
> (From Brooklyn *Tablet,* October 10, 1936)

The various states in adopting their state constitutions have recognized their complete dependency upon the Creator for the blessings of life, liberty and happiness. We cite the provision of the New Jersey Constitution:

> "We the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which he hath so long permitted us to enjoy, and looking to him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution."

This dependency of the State upon the Creator is further evidenced in the fact that the clergy are called upon to invoke the Divine aid and guidance for state and national legislative bodies at their sessions. The courts use the Bible and the phrase "So help me, God" in administering the oath. The courts and public buildings are closed on the first day of the week out of deference to what is believed to be a God-given day of rest. Many court decisions recognize the supremacy of the Creator, and the divine inspiration of His Word, the Bible.

Can the state, or any municipality therein, then be heard to say that its laws are superior to the laws of Almighty God? Can the creature dictate to the Creator? The answer must be, emphatically, No. The state and its subdivisions are estopped from asserting supremacy over the laws of God.

The situation might be illustrated in this manner: Suppose the governor of a state, being duly empowered by

the legislative body, should send out representatives to all the municipalities of the state to call on the people at their homes; gather certain statistical information from them; and give to the householders pamphlets conveying information on matters of importance to the people. In many cities and towns there are very stringent canvassing ordinances, similar to the Griffin ordinance, requiring any person going from house to house to secure a permit from the police department. If a local police official should ask one of these state representatives for a permit, would he not well answer: "I do not need a permit for this work. I am authorized and directed to engage in this work in this municipality by the chief executive officer of this state. The higher law gives me the authority to here call upon the people. Your local ordinance does not at all apply to the work in which I am engaged. I will not insult the governor of this state by securing a permit from you to do work commanded by the state"?

With much greater force, then, can this appellant, or any Christian, say: "I am a representative of the Most High God, Creator of heaven and earth. I am commissioned by Him to present His message to the people. God's law is superior to all laws of man, and therefore I am not required to secure a permit from any official to engage in this work. I will not insult the Creator by asking some creature for permission to do His work. I will obey God rather than men."

Sometimes it is argued that the Scriptural citation, "Render therefore unto Caesar the things which be Caesar's, and unto God the things which be God's" (Luke 20:25), means that all men should obey all laws of the governments regardless of God's laws. It is obvious that such is not the case. The words were uttered by the Master in response to a trick question by His enemies, the Pharisees. "Caesar" represents the government. Jesus specified: Here are two authorities, the government of man, and the

Divine power. Each has certain requirements. The government of man requires obedience to its laws, payment of taxes, etc. God requires implicit obedience to His laws. Both can be obeyed if there is no conflict. But when there is conflict caused by the law of man conflicting with the law of God, the Higher law, that of the Creator, the Supreme Authority, is to be obeyed.

POINT II

The ordinance in itself and as construed and applied by the Court of Appeals of the State of Georgia unreasonably restricts and denies freedom of speech and freedom of press and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

A

Freedom of speech and press is guaranteed under the Fourteenth Amendment to the United States Constitution.

Gitlow v. N. Y., 268 U. S. 652, 666;
Stromberg v. Cal., 283 U. S. 359;
Near v. Minn., 283 U. S. 697, 707;
Grosjean v. American Press Co., 297 U. S. 233;
De Jonge v. Oregon, 299 U. S. 353.

Freedom of speech and press is the right to freely speak, write, publish and circulate sentiments on all subjects. The right of circulating is as essential to freedom of the press as is the liberty of publishing. (In re Jackson, 6 Otto 727, 24 L. Ed. 877, 879) In this modern time expression is usually by means of printed publications in the shape of periodicals, handbooks or bound volumes.

These are circulated by mail or by some form of personal distribution.

The Griffin ordinance constitutes a previous restraint on the circulation of printed matter by personal distribution in that a license or permit is required to distribute any literature of any kind. It thus covers not only the circulating of commercial matter, but also matters of public interest, historical, social, political and of religious import. It covers circulating everywhere in the city, on the streets, in public places, from house to house, and inside buildings or business places.

To one man, the City Manager, is delegated the power to permit or censor this form of expression of speech and press. Labor unions, political organizations, newspapers, magazines, religious and social welfare groups, all must secure his approval and permission to distribute any printed matter concerning their cause to the citizens.

The Court is asked to carefully consider the tremendous power placed in the hands of one official. He can dictate what can be expressed to the people. Of course, the mails are open, but it is not the American way to be limited exclusively to that form of distribution.

Little is said in the history books of the methods used by the early patriots in getting their pamphlets to the people. Many were written. Every schoolboy knows of Hamilton's handbooks, *The Federalist*. Undoubtedly some copies were circulated from house to house and person to person. Thomas Paine wrote and distributed many pamphlets in the cause of liberty. William Lloyd Garrison, no doubt, used that method in declaiming against slavery. If in those days the municipalities were afflicted with executive officers holding omnipotent powers over the distribution of literature, like the City Manager of Griffin, an important avenue of public expression would have been closed.

The cases on free speech and freedom of press largely deal with what is termed "dangerous" literature, such as

the defamatory, seditious, Communistic, or revolutionary type. Nevertheless the courts have decreed that previous restraints even on such publications must be the exception, rather than the rule, and that the penalizing of utterances "must find its justification in a reasonable apprehension of danger to organized government". Herndon v. Lowry, 301 U. S. 242.

We cite the following from Near v. Minnesota, 283 U. S. 697:

> " . . . The general principle that the constitutional guaranty of the liberty of the Press gives immunity from previous restraints has been approved in many decisions under the provisions of state constitutions.
>
> "The importance of this immunity has not lessened. While reckless assaults upon public men, and efforts to bring obloquy upon those who are endeavoring faithfully to discharge official duties, exert a baleful influence and deserve the severest condemnation in public opinion, it cannot be said that this abuse is greater, and it is believed to be less, than that which characterized the period in which our institutions took shape. Meanwhile, the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous Press, especially in great cities. The fact that the liberty of the Press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the Press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege."

There can be no question that forbidding the circulation of certain publications specifically is a violation of freedom of press.

Efforts of officials to forbid the circulation on the streets of Cleveland of Ford's anti-Jewish *Dearborn Independent* were held to violate the guaranty.

Dearborn Co. v. Fitzgerald (D. C.) Ohio, 271 Fed. 479.

An ordinance forbidding circulation of cards of the I. W. W. was held invalid as denying free speech.

Ex Parte Campbell (Col. App.), 221 Pac. 952.

In California it was also held that an anti-picketing ordinance, held valid as an exercise of police power, could not prevent sale of a newspaper published by labor organizations, though the method of sale constituted a violation of the ordinance. Such prevention, the court held, citing in the matter of Jackson, *supra,* would interfere with freedom of speech.

People v. Armentrout, 1 Pac. (2d) 556.

Then how can this ordinance be held valid? It is true that it names no publication. But it covers all publications. It may be used to prohibit all publications, or any publication. The circulation of any publication is subject to the autocratic control of the City Manager. Freedom of speech then is not regulated by law, but is under the jurisdiction of the fancy, whim, notion or caprice of the official.

It is conceded that appellant was engaged in the highest and most noble of callings. She was exercising her right to free expression by conveying to people at their homes the gracious message of the Creator, as revealed in His Word, the Bible. Because she handed to some of the people of Griffin copies of a periodical, and Bible literature, she was arrested, convicted and fined. She had failed to secure permission from the czar in control of expression of public opinion in Griffin.

B

The application of the ordinance is invalid because the City of Griffin did not justify such restriction and denial

of free speech and free press by showing that the acts complained of were inimical to public welfare, contrary to public morals, or that they jeopardized the safety of the state.

We cite the following from De Jonge v. Oregon, 299 U. S. 353 (1937):

> "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Some of the state courts have frowned upon the unreasonable restrictions as given in the Griffin ordinance. In the case of City of Chicago v. Anna Schultz, 341 Ill. 208 (1930), an ordinance was involved which provided that

> " . . . it shall be unlawful for any person, firm or corporation . . . to distribute, hand out, or scatter upon any street, alley, sidewalk, or other public place, in the City of Chicago any circular, handbill, pamphlet, card, picture, or any advertising matter whatsoever . . . "

The Court held:

> "The ordinance is not a reasonable exercise of police powers. Its strict enforcement would unreasonably hamper persons in the conduct of their affairs. In the

> broad language used in the ordinance the city has attempted to regulate and control the habits and practices of the citizen without any reasonable basis for so doing. The ordinance in its present form is an unreasonable interference with the private rights of the citizen and must be held void."

Justice Bodine, of the New Jersey Supreme Court, in the matter of the application of Nancy Cox for a writ of habeas corpus (not printed in the reports) on September 24, 1937, held:

> "The federal government may preclude one from making improper use of the mails, but I think no one would contend that it could preclude a citizen from distributing by mail historical documents or a contemporary comment upon matters of public interest. Neither may a borough, in an attempt to keep its streets clean and unlittered, forbid a citizen from handing to another citizen a document of historic and social interest."

People v. Johnson, 117 N. Y. Misc. 133, is in point. It involved a New York City ordinance which provided:

> "No person shall throw, cast or distribute any handbill, circular, card or other advertising matter whatsoever in or upon any street or public place."

The defendants were convicted of violation of the ordinance, in handing out circulars in front of a theater where a moving picture exalting the activities of the Ku Klux Klan was being exhibited. It was held that the ordinance was never intended to prevent the lawful distribution of anything other than commercial and business advertising matter, and the circular in question did not come within that category.

The Court held:

> "It would be a dangerous and un-American thing to sustain an interpretation of a city ordinance which

would prohibit the free distribution by a body of citizens of a pamphlet setting forth their views against what they believed to be a movement subversive of their rights as citizens.

"The Constitution of the State of New York provides that every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge the liberty of speech or of the press. . . .

"The ordinance within reasonable limits is a proper one, and should be sustained, but no ordinance no matter how worthy its intendment *should be permitted in any way to curtail any of the fundamental rights of the citizens.*"

It is respectfully submitted that the Griffin ordinance through its restraint upon the free expression and circulating of publications constitutes a gag law which curtails the fundamental rights of citizens and is therefore invalid.

POINT III

The Griffin ordinance in itself, and as construed and applied by the Court of Appeals of the State of Georgia, denies liberty and the equal protection of the law through the arbitrary and uncontrolled power given to the City Manager to issue permits for distribution of printed matter, and is therefore invalid under Section One of the Fourteenth Amendment to the United States Constitution.

The Court of Appeals of Georgia held that the ordinance was not attacked on the ground that it arbitrarily

grants to the City Manager the power to grant or refuse a license at will, such power being uncontrolled by any rule or standard or provision for review.

The rule is that no particular form of words or phrases is essential to raise a Federal claim. It must be brought with "fair precision" and if the record as a whole shows either expressly or by clear intendment that a certain section of the Federal Constitution was relied upon, and the right claimed under it, the claim is to be regarded as having been adequately presented.

People v. Zimmerman, 278 U. S. 63;
Green Bay & Miss. Canal Co. v. Patten Paper Co., 172 U. S. 58;
St. Louis I. M. & S. Ry. Co. v. Starbird, 243 U. S. 592.

Applying these principles to the facts in this case we find as follows: In paragraph 2 of the demurrer of appellant in the trial court the provisions of Section One of the Fourteenth Amendment to the United States Constitution were set forth in full, and the claim made that appellant was denied the liberty of freedom of press and freedom of religion because of the arbitrary power and authority given to the City Manager.

It is respectfully submitted that the record shows a raising of this question with "fair precision", and it is therefore adequately presented.

Unlimited power and discretion is given to the City Manager of Griffin to issue or not to issue a permit for distribution of literature. There is no standard or measure by which he may draw the line and differentiate between those who may receive the permit, and those who may not. He may make such rules as he desires or such conditions as he pleases. He is the complete boss over the issuance of permits for the uses prescribed in the ordinance.

The only guaranty of the just and proper administration of this ordinance is the intelligence, the character, and

the good will of this official. And, while the present or any subsequent incumbents of the office may be possessed of all these qualities, the fact remains that the law is not of itself uniform in operation, but that its uniformity is dependent upon the mere will of the official. The ordinance thus makes the government of the City of Griffin, so far as its subject matter is concerned, a government not of laws, but of men.

The well established rule is to the effect that a statute or ordinance which vests arbitrary power with respect to an ordinary lawful business, profession, appliance, etc., in public officials without prescribing a rule of action, or, in other words, which authorizes the issuing or withholding of licenses, permits, approvals, etc., according as the designated officials arbitrarily choose, without reference to all of the class to which the statute or ordinance was intended to apply, and without being controlled or guided by any definite rule, or specified conditions to which all similarly situated might knowingly conform—is unconstitutional and void.

12 ALR 1436;
54 ALR 1104.

The decision of this Court in the case of Yick Wo v. Hopkins, 118 U. S. 356, is the leading authority on this subject. It clearly and definitely decided that an ordinance conferring arbitrary power upon the Board of Supervisors to grant or refuse permits for conduct of a laundry business was invalid as denying equal protection of the laws, within the Fourteenth Amendment to the Federal Constitution. The Court stated:

> "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.

> Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the Commonwealth 'may be a government of laws and not of men'. For the very idea that one man may be compelled to hold his life, or the means of living, *or any material right,* essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

Measured by this decision alone, we respectfully urge, the ordinance of Griffin here involved must be held to be violative of constitutional provisions.

The law is so clear and decisive that it is unnecessary to encumber this brief with discussions of the vast number of American decisions, both State and Federal, sustaining the proposition herein advanced. The trend of the authorities is well shown by the cases listed in 12 ALR 1436, 54 ALR 1104, and in the following quotation from 2 McQuillan on "Municipal Corporations", page 726, Section 764, Second Edition, which reads:

> "Notwithstanding express power may exist to enact, the ordinance must provide a uniform rule of action; it must contain permanent legal provisions, operating generally and impartially, for its enforcement cannot be left to the will or unregulated discretion of the municipal authorities or any officer of the corporation. . . . 'A public duty which the legislature has confided to the deliberative judgment or discretion of the lawmaking power of a municipality cannot be delegated by the latter to the judgment or discretion of one constituent element of that power, nor to the judgment or discretion of others.'"

The cases cited cover permits and licenses for various kinds of business, to wit, jewelry, laundry, dairy, rag picking, butcher, pharmacy, physicians, restaurants, and stables. They also cover the issuing of permits for the storing of oils; operation of steam engines, mills and shops; parades; singing; operation of musical instruments; selling securities; operation of cemeteries, and other subjects.

The precise point involved and raised in the demurrer of appellant (Record page 4) is that the ordinance abridges freedom of press and religion by prohibiting the distribution of literature of any kind in the city without permission of the City Manager. It goes far beyond the ordinary and proper exercise of the police power, and imposes unusual and unnecessary restrictions and prohibitions upon fundamental rights. The use and exercise of religious freedom and freedom of speech and press is not free, but rests upon the uncontrolled inclination and bent of the City Manager. That is not in accordance with constitutional principles.

The Griffin ordinance is invalid on its face, and the attempt is being made to enforce its penalties against appellant in violation of constitutional law. Appellant is a proper person to raise the question of its constitutionality.

Smith v. Cahoon, 283 U. S. 553.

Conclusion

Each of the Federal constitutional grounds taken separately is sufficient to warrant setting aside as invalid the ordinance of the City of Griffin here involved. Taken together, they establish conclusively that the ordinance as applied and construed by the Court of Appeals of Georgia serves to deprive appellant of basic rights guaranteed by the Federal Constitution.

The decision of the Court of Appeals of Georgia should be reversed and the appellant Alma Lovell discharged from custody and her bond released.

Respectfully submitted,

O. R. Moyle,
Counsel for Appellant.

Grover C. Powell,
of Counsel.

Supreme Court of the United States

October Term, 1937

No. 331

ALMA LOVELL,
Appellant,

against

CITY OF GRIFFIN,
Appellee.

Appeal from
Court of Appeals
State of Georgia

BRIEF OF APPELLEE

Hughes Dorsey,
Sumter M. Lowry,
Attorneys for Appellee.

H. C. Tebeau,
Griffin, Georgia,
Of Counsel.

INDEX

Subject Index

	Page
Statute Drawn in Question	1
Questions Presented	2
(A) It is claimed the ordinance in question denies to appellant freedom of worship	2
(B) It is claimed the ordinance in question denies to appellant freedom of speech and of the press	2
(C) It is claimed the ordinance in question denies to appellant due process of law and the equal protection of the law	2
Statement of Appellee's Contentions	3
(A) The ordinance in question is not aimed at religious worship or practies and has no legal relation to the right of freedom of worship	3
(B) The ordinance does not infringe the constitutional right of free speech or the freedom of the press, and if it does, appellant does not belong to the class of persons embraced within these constitutional guaranties	4
(C) The appellant failed to raise the question of due process of law in a manner to bring that issue before the Court on its merits	4
Argument	6
(A) Pertinent portions of appellant's demurrer	6
(B) The ruling of the Court of Appeals of Georgia	7
Citation of Authorities	10
Appellant Did Not Properly Raise the Question of Due Process	15

INDEX

Table of Cases Cited

Page

Coleman vs. Griffin, 55 Ga. App. 123 15

Commonwealth vs. Herr, 229 Pa. St. 132 11

Commonwealth vs. Plaisted, 148 Mass. 375 10

Curtis vs. Helen, 171 Ga. 256 15

Fidelity & Casualty Co. of New York vs. Freeman, 109 Fed. 847 13

Iroquois Transportation Co. vs. DeLaney, etc. Co., 205 U. S. 354 13

Jordan vs. State, 172 Ga. 857 15

Lee vs. State of New Jersey, 207 U. S. 67 13

Louisville & Nashville Ry. Co. vs. Woodford, 234 U. S. 46 16

McMasters vs. State, 21 Okla. Crim. 318 11

Missouri, etc. Rd. Co. vs. Cade, 233 U. S. 642 13

Palmer vs. Phinizy, 151 Ga. 589, 591 15

Reynolds vs. United States, 98 U. S. 145 11

Smith vs. People, 51 Colo. 271 10

State vs. Big Sheep, 75 Mont. 219 11

State vs. Marble, 72 Ohio St. 21 10

State vs. Neitzel, 69 Wash. 567 11

Streitch vs. Board of Education, 34 S. D. 169 11

IN THE

Supreme Court of the United States

October Term, 1937

No. 391

ALMA LOVELL,
Appellant,

against

CITY OF GRIFFIN,
Appellee.

Appeal from
Court of Appeals of
State of Georgia.

THE STATUTE DRAWN IN QUESTION

The appellant was convicted of violating the following ordinance of the City of Griffin, Georgia, to-wit:

> "Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the city limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin.

"Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance."

It is not denied that she violated the ordinance. The appeal is based on the contention that the ordinance is so far in conflict with certain provisions of the Constitution of the United States as to render invalid the conviction of the appellant thereunder.

QUESTIONS PRESENTED

In her brief, appellant asserts that the following Federal questions were properly raised in the Trial Court and decided adversely to her, to-wit:

(1) That the ordinance in question, as applied by the Trial Court and the Court of Appeals of Georgia, denies to appellant that freedom of worship guaranteed to her by the Constitution of the United States.

(2) That the ordinance as construed and applied by the Trial Court and the Court of Appeals of Georgia denies to appellant that freedom of speech and freedom of the press guaranteed to her by the Constitution of the United States.

(3) That the ordinance denies to appellant due process of law and the equal protection of the law, for that her right to distribute literature in the City of Griffin, Georgia is made to depend upon the arbitrary discretion of the City Manager of

the City of Griffin as to whether he would issue the permit contemplated by the ordinance.

Appellee relies upon the following propositions to sustain the judgment of the Court of Appeals of Georgia, to-wit:

> 1. The terms of the ordinance speak for themselves and speak plainly. No reference therein to religion or to religious worship or to religious practices is to be found. It contains nothing touching the right to speak or write freely and as one may choose. Obviously, it is wholly unrelated to any problem of religion or any question of freedom of public discussion or the right or practice of saying or writing what one thinks.

On the contrary, in its nature this ordinance is a police measure which deals with the practice of distributing circulars, handbooks, advertising and other literature within the City limits of Griffin, Georgia. If it be kept in mind that every municipality is faced with a sanitary problem in removing from its streets papers, circulars and other like materials, the reasons for the adoption of such an ordinance become apparent. Clearly there is a permissible field for such a regulation within constitutional limitations. The point material to the present discussion is that nothing in the ordinance is aimed at or relates to the right to worship as one may prefer, or the right to speak or write with complete freedom. The fact the appellant may have in her own mind associated her forbidden activities with her religious convictions does not establish any legal or constitutional connection between them.

2. Appellant is not a member of the press. The record in this case does not place her in the class of persons who are entitled to invoke the constitutional provisions touching the freedom of the press. Moreover, she was not convicted for anything she was speaking or writing. Neither does the ordinance prohibit her from speaking or writing as her judgment may dictate. The requirement of the ordinance that she is not to distribute printed matter which others have published without a permit involves in no way the constitutional right of free speech.

3. The ordinance does restrict the right of appellant and the right of all others to distribute circulars, advertising matter and other literature in the City of Griffin, Georgia, in the absence of a permit from the City Manager. It is urged that this restraint involves a denial of due process and the equal protection of the law, in that the City Manager is clothed with unqualified discretion in granting or denying the permit. It is scarcely a denial of the equal protection of the law in that it applies in like manner to all persons. A substantial question as to due process might have been involved in the case except for the following essential facts, to-wit:

(a) Appellant failed to raise in any proper manner the issue of due process in the Trial Court. The Court of Appeals of Georgia so ruled and rightly so ruled. For this reason, the question of due process is not properly presented to this Court.

(b) Appellant did not apply to the City Manager of

Griffin, Georgia, for a permit. She is not in the position of having suffered from the exercise of the arbitrary and unlimited power of the City Manager, of which she complains. Had she made application for a permit and had she been denied one without adequate reason, her constitutional rights would have been infringed. She seeks to claim the benefit of the presumption that an application by her for a permit would have been denied. Nothing in the record justifies such an assumption. The fact that the City Manager is clothed with arbitrary power, if it be a fact that the power granted to him by the ordinance is arbitrary, affords the appellant no ground of complaint unless and until she has suffered from the exercise of this power. It is submitted that it is proper for the City of Griffin to provide by ordinance that all persons distributing materials described by the ordinance be required to apply for a permit. If so, no person desiring to engage in this activity can suffer any legal wrong by reason of the ordinance until the application for a permit has been denied. Until the contrary appears from experience, it will be presumed that all persons legally entitled to a permit will be granted one by the City Manager.

Appellee does not seek to maintain the proposition that the City of Griffin, Georgia, can constitutionally authorize its City Manager to grant or withhold these permits solely in his discretion. Had the appellant applied for one and been denied without substantial cause, a question of due process would have arisen. Even then, it would be necessary, in order to get a

hearing in this Court, for the appellant to raise this question in the manner required by the accepted rules of practice, and this she has not done.

ARGUMENT

The issues which the appellant submits for the consideration of this Court are based on the demurrer which she filed in the Trial Court, and which appears in the record as a part of her petition to the Superior Court of Spalding County, Georgia, for a writ of certiorari. The material parts of the demurrer are as follows:

> "2. Because said ordinance is contrary to and in violation of the first amendment to the Constitution of the United States, which reads:
>
> 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise therof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.'
>
> Said ordinance is also contrary to and in violation of the fourteenth amendment to the Constitution of the United States, which had the effect of making the said first amendment applicable to the States, and which reads:
>
> 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or en-

force any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.'

Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the City Manager and thus abridges the freedom of the press, contrary to the provisions of said quoted amendments.

Said ordinance also prohibits the free exercise of petitioner's religion and the practice thereof by prohibiting the distribution of literature about petitioner's religion in violation of the terms of said quoted amendments."

The petition to Spalding Superior Court for certiorari was denied. Appellant carried her case to the Court of Appeals of Georgia, where the case was affirmed in a decision reported in 55 Ga. App. 609. In headnote 2, the Court of Appeals of Georgia passed upon the questions urged upon this Court in the following language:

"The ordinance is not unconstitutional because it abridges the freedom of the press or prohibits the distribution of literature about the petitioner's religion, in violation of the fourteenth amendment to the constitution of the United States, (Code, Secs. 1-815). See Coleman v. Griffin, 55 Ga. App. 123 (189 S. E. 427). The ordinance is not attacked

> on the ground that it arbitrarily grants to the city manager the power to grant or refuse a license at will, such power being uncontrolled by any rule or standard or provision for review."

In her demurrer, appellant attacks the constitutionality of the ordinance only on the two specified grounds that it abridges the freedom of the press and that it prohibits the free exercise of petioner's religion and the practice thereof. If the question of the due process of law is before this Court, it must be spelled out of mere general allegations that the ordinance is in conflict with the Fourteenth Amendment to the Constitution of the United States, without any particularization as to how the ordinance violates the provisions of this amendment.

It is reasonably inferable that this case had its origin in a deliberate purpose to bring this ordinance in question as an interference with the religious practices of the appellant and that all other contentions now presented are more or less afterthoughts. As appears on page 7 of appellant's brief, she testified on the trial of her case in the following words:

> "I did not ask for a permit, because I am sent by Jehovah to do His work. His law is supreme and above every human law. To apply for a permit to do His work would be an act of disobedience to His commandment. It would be an insult to the Most High which would in time result in my eternal destruction."

It is submitted that the attack on this ordinance on the ground it violates freedom of worship is not well taken. As hereinbefore pointed out, the ordinance does not in terms speak of religion or religious practices. It applies to all classes of persons equally and impartially and without reference to whether they subscribe to any religion. The ordinance prohibits certain overt acts which in and of themselves are not characteristic of any form of worship or any religious practice, but have to do with ordinary, everyday activities of the business world. The ordinance in no way limits or interferes with the right of the appellant to believe what she will or to preach as she may be inspired, or to do any one of the numerous other things which in common practice are associated with religious activities and religious worship.

She seeks to maintain the position that she has a right to propagate her faith in such manner as she may choose without interference on the part of the civil law, even though the methods she adopts may in and of themselves have no logical relation to the freedom of worship to which she is entitled. If she has the right to adopt any and all procedure she may choose in carrying on her religious activities and if the civil law must step aside whenever she conceives that one of its regulations is in her way, then the police power of the civil government is limited by her conception of what is needful and proper in the prosecution of her religious work. She might with just as much reason claim the right to stand in the middle of the principal

street of the City of Griffin and preach to a crowd gathered there, even though the effect might be to impede traffic. An ordinance regulating the distribution of circulars and advertising matter does not violate freedom of worship any more than would an ordinance which prohibits the assembly for religious worship of a crowd of people in the streets of a city. Neither ordinance would relate to religion as such. It has been held that a religious body can not successfully invoke constitutional provisions with reference to religious freedom to justify the violation of reasonable rules regulating the use of streets.

Com. vs. Plaisted,
148 Mass. 375.

Again certain groups have regarded healing by prayer as an essential feature of their religious worship. Notwithstanding this, it has been ruled that Statutes prohibiting the cure of the sick for hire by means of prayer is not a denial of the constitutional right of the free exercise and enjoyment of religious profession and worship.

Smith vs. People,
51 Colo. 271;

State vs. Marble,
72 Ohio St. 21.

It has been held that the right of religious freedom is not violated by requiring those seeking admission to

a public school to furnish the certificate of a physician as to physical condition.

Streitch vs. Board of Education,
34 S. D. 169.

Practices subversive of civil government, even though carried on in the name of religion, may constitutionally be prohibited.

State vs. Big Sheep,
75 Mont. 219.

It has been aptly said that laws are made for the government of actions and that while they cannot restrict or interfere with mere religious beliefs, they may with practices.

McMasters vs. State,
21 Okla. Crim. 318.

The fact that one conscientiously believes a given act or practice to be of a religious character does not make it so in the eyes of the law. If such act or practice is in fact of a purely secular nature, then it is subject to regulation under the police power.

Reynolds vs. United States,
98 U. S. 145;

State vs. Neitzel, 69 Wash. 567;

Com. vs. Herr,
229 Pa. St. 132.

Obviously the difficulty with this contention on the part of the appellant is that the act for which she was convicted is secular in its nature and is not, when examined in the light of logic or of common practice, religious in its character. Whatever constitutional vices may attach to this ordinance, the attack based on the ground that it interferes with religious freedom is not well taken. The thing it interferes with by its terms is not religion or any part of religion as that term is construed and applied by the law.

What has been said touching the issue of religious freedom is equally applicable to the contention that the ordinance abridges the freedom of the press. It is unnecessary to cite authority for the proposition that the first amendment to the Constitution of the United States is a limitation on the power of Congress and that its provisions are irrelevant for the purpose of testing the ordinance here under consideration. Doubtless it is true that the Fourteenth Amendment to the Constitution of the United States is sufficiently broad to protect the individual against legislation by the State or its political subdivisions which arbitrarily interferes with the freedom of religious worship, but the reliance of appellant in her demurrer on the first amendment to the Constitution of the United States is unavailing.

The record in the case does not suggest that the appellant is a member of the press or that an ordinance abridging the freedom of the press would apply to her. A person who seeks to raise the question of the consti-

tutionality of a Statute is without standing for that purpose unless he belongs to the class which is affected by the Statute.

Iroquois Transportation Co. vs.
DeLaney, etc. Co.,
205 U. S. 354;

Lee vs. State of New Jersey,
207 U. S. 67;

Fidelity & Casualty Co. of New York,
vs. Freeman, 109 Fed. 847;

Missouri, etc. Rd. Co. vs. Cade,
233 U. S. 642.

In general, constitutional guaranties touching the freedom of the press and freedom of speech were designed to prohibit restraints and limitations which at one time in English history had been imposed on the right to speak and write freely. Doubtless the primary meaning of the phrase "liberty of the press" is freedom from censorship and from restraints upon publication, especially those which were practiced in former times in monarchal and despotic governments. The freedom of the press is the right without any previous license or censorship to publish the truth.

Nothing in the ordinance here under consideration prohibits any person from publishing anything he may care to and nothing in the ordinance requires a license as a condition to such publication. Neither is there any

prohibition in the ordinance against any person speaking whatever may be in his mind. The subject-matter of the ordinance is something else altogether.

It is contended that the ordinance interferes with the free circulation of certain literature and that this is tantamount to the denial of the right to publish freely. It is not believed that this conclusion is sound. No prohibition or penalty is attached to what is printed or to the manner of the publication. The ordinance applies to certain actions involving the physical handling of printed matter. It goes no futher. To regulate the physical handling and distribution of printed matter within a city is not in and of itself a regulation of the freedom of speech or the freedom to write and publish. The ordinance applies to all persons alike and has no special application to publishers.

Doubtless it would be constitutional for the City of Griffin to adopt an ordinance prohibiting merchants from placing books and pamphlets on the sidewalks in front of their stores. Such an ordinance could scarcely be considered as having any relation to freedom of speech and freedom of worship. The ordinance now under consideration is not different in character, as respects the constitutional issue of free speech and a free press.

It is not disputed that an ordinance of the type under investigation may be open to attack as denying due process of law, where a city offical under such ordinance possesses an uncontrolled discretion to arbitra-

rily interfere with the freedom of action of the citizen. In the present case, had the appellant applied for a license and had she been refused without reasonable cause, she doubtless could have urged with much force that she had been denied due process of law. She has not placed her case on this foundation. She elected to proceed on the theory that her right to follow her religious practices according to her chosen way is superior to the civil law. She did not apply for a license. She does not know and can not know that she would have suffered from an arbitrary application of this ordinance.

Moreover, she failed to raise in a proper manner the constitutional issue of due process based on the contention that the ordinance is arbitrary. The Court of Appeals of Georgia so ruled in recognition of the well-established requirement in this connection.

Coleman vs. Griffin,
55 Ga. App. 123;

Curtis vs. Helen,
171 Ga. 256;

Jordan vs. State,
172 Ga. 857;

Palmer vs. Phinizy,
151 Ga. 589, 591.

In this state of the record the contention that the

ordinance is arbitrary and violates due process of law is not before this Court on its merits.

Louisville & Nashville Ry. Co.
vs. Woodford, 234 U. S. 46.

In the case just cited it was ruled that in order that the denial of a federal right may be the basis for reviewing a judgment of a State Court, the claim of federal right must be made in the State Court in the manner required by the State practice. On page 51 of the decision, this Court used the following language:

> "If a Federal question can be said to be involved at all, it was introduced into the record upon the argument of the motion for a new trial. Disposing of that question The Court of Appeals of Kentucky set forth that the question was not raised by the pleadings or requested instructions, or by motion for a new trial or written motion of any kind, and concluded that it must have been raised orally. It pointed out that under the Kentucky Code of Practice such contentions were required to be in writing, and that if the defendant desired to take advantage of its limited liability it must under the code of the State specifically rely upon that defense in its answer. In making this holding, the Kentucky court but enforced a rule of practice of that State. The decisions of this court not only have repeatedly held that a Federal right in order to be reviewable here must be set up and denied in the state court, but have often held that such claim of denial is not properly brought to the attention of this court where it appears that the

state court declined to pass upon the question because it was not raised in the trial court as required by the state practice. Schuyler Nat'l Bank v. Bollong, 150 U. S. 85; Erie R. R. Co. v. Purdy, 185 U. S. 148; Layton v. Missouri, 187 U. S. 356. In this case there is no reason to believe that there was an attempt on the part of the state court to evade the decision of Federal questions, duly set up, by unwarranted resort to alleged rules under local practice, and upon this point this case comes within former rulings of this court, as we have seen."

If the ordinance under investigation violated any constitutional right of the appellant, it was not that of religious freedom or the freedom of speech or of the press. She failed to raise in the proper manner for consideration by the Georgia Courts any other constitutional issue.

Respectfully submitted,

Hughes Spalding

James M. Kelley

Attorneys for City of Griffin.

Post Office address:
434 Trust Company of
Georgia Bldg.,
Atlanta, Ga.

FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 20 1938
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 391.

ALMA LOVELL,

Appellant,

against

CITY OF GRIFFIN,

Appellee.

BRIEF AND MOTION ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE.

FRANCIS BIDDLE,
OSMOND K. FRAENKEL,
LLOYD K. GARRISON,
Counsel for the
American Civil Liberties Union.

ACKERMAN PRESS, Inc., 142 Liberty St., 'Phones Rector 2-5356-7

CASES CITED.

	PAGE
Bulletin of International Juridical Association, V, 147 (June, 1937)	4n
City of Chicago v. Schultz, 341 Ill. 208, 173 N. E. 276 (1930)	5
City of Johnstown v. Spencer, VI, page 74 (Dec., 1937)	4n
City of Newark v. Hill, I, No. 12, page 2 (May, 1933)	4n
Coughlin v. Sullivan, 100 N. J. L. 42, 126 Atl. 177 (1924)	5
Cox v. Edgewater, VI, page 41 (Oct., 1937)	4n
Dearborn Pub. Co. v. Fitzgerald, 271 Fed. 479 (1921)	3
deJonge v. Oregon, 299 U. S. 353	5
Ex parte Neill, 32 Tex. Cr. 275, 22 S. W. 923 (1893)	3
Ex parte Pierce, 125 Tex. Cr. 470, 75 S. W. 2nd 264 (1934)	4
Grosjean v. American Press Co., 297 U. S. 233	3
Herndon v. Lowry, 301 U. S. 242	5
In re Jackson, 96 U. S. 727	3
Near v. Minnesota, 283 U. S. 697	3
New Rochelle v. McCormick, Westch. (N. Y.) L. J., June 11, 1935, page 997	4

PAGES

People v. Armentrout, 118 Cal. A. 761, 1 P. 2nd 556, 560 (1931) 5
People v. Armstrong, 73 Mich. 288, 41 N. W. 275 (1889) 5
People v. Johnson, 117 N. Y. Misc. 133 (1921) 5
People v. Toth, II, No. 5, page 2 (Oct., 1933) 4n

Star Co. v. Brush, 185 N. Y. App. Div. 261, 172 N. Y. Supp. 851 3
Star Co. v. Brush, 103 Misc. 631, 170 N. Y. Supp. 987 .. 3
Star Co. v. Brush, 104 Misc. 404, 172 N. Y. Supp. 320 (1918) 3, 4

Yick Wo v. Hopkins, 118 U. S. 356 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 391.

ALMA LOVELL,

Appellant,

against

CITY OF GRIFFIN,

Appellee.

Motion for Leave to File Brief as Amicus Curiae.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the American Civil Liberties Union, a corporation, respectfully move this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of counsel for both parties herein has been secured.

Special reasons in support of this motion are set out in the accompanying brief.

January 15, 1938.

FRANCIS BIDDLE,
OSMOND K. FRAENKEL,
Counsel for the
American Civil Liberties Union.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1937.

No. 391.

ALMA LOVELL,

Appellant,

against

CITY OF GRIFFIN,

Appellee.

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE.

The American Civil Liberties Union is submitting a brief herein as *amicus curiae* because of its interest in the question of free speech raised herein. The American Civil Liberties Union is an organization devoted to the furtherance and protection of the personal rights guaranteed by the Constitution of the United States. It has for many years supported individuals and groups whose basic rights were threatened, either in the courts, or before legislative bodies. It believes that essential to the functioning of any democratic government is the right of people freely to express their opinions. In line with that belief the American Civil Liberties Union has been active in the defense of persons subject to prosecution for mere expression of opinion.

The American Civil Liberties Union believes that this case presents an important variation of the ever-recurring

problem of suppression. It is true that here is no prosecution based on the nature of the opinions expressed. Nevertheless, there has been effective suppression of the dissemination of opinion. And the case is the more serious in that it is in no way contended that the opinions expressed violated any law.

Succinctly put, the question is whether a municipality may restrict the dissemination of opinion by requiring a permit as a condition precedent to distribution of pamphlets. We believe that, under well settled doctrine, only a negative answer to the question is possible.

If anything must be deemed settled it is that the guarantees of freedom of speech and of the press prohibit prior censorship by any method whatever.

> *Near* v. *Minnesota,* 283 U. S. 697.
> *Grosjean* v. *American Press Co.,* 297 U. S. 233.

There can, therefore, be no doubt that an ordinance which prohibits the publication of newspapers violates the constitutional guarantee. No different result can follow because distribution rather than publication is thus restricted. See *In re Jackson,* 96 U. S. 727. And many courts have so held.

> *Star Co.* v. *Brush,* 185 N. Y. App. Div. 261, 172 N. Y. Sup. 851.
> *Star Co.* v. *Brush,* 103 Misc. 631, 170 N. Y. Supp. 987.
> *Star Co.* v. *Brush,* 104 Misc. 404, 172 N. Y. Supp. 320 (1918).
> *Ex parte Neill,* 32 Tex. Cr. 275, 22 S. W. 923 (1893).
> *Dearborn Pub. Co.* v. *Fitzgerald,* 271 Fed. 479 (1921).

It is equally obnoxious to the constitutional guarantee that the ordinance, instead of absolutely prohibiting distribution, requires a permit for that purpose. *Star Company* v. *Brush,* 104 Misc. 404, 172 N. Y. Supp. 320 (1918). Can it make any difference that the ordinance refers to leaflets rather than to newspapers?

In the case at bar the ordinance describes "circulars, handbooks, advertising or literature of any kind" (R., 3). It has been applied to pamphlets which, though offered in evidence (R., 12), are not printed in the record. However, a statement made by defendant at the trial describes these pamphlets as explaining the gospel of the "Kingdom of Jehovah" (R., 12). The doctrine preached was wholly religious, in no way in violation of any law or conducive to a breach of the peace. Nor can it be said that distribution of the material might be restricted on the ground that it was commercial in character.

While the precise question here involved has not heretofore been decided by this Court, other courts have held that similar ordinances violated the guarantee of freedom of speech or, mindful of the constitutional guaranty, they have restricted the application of the ordinances to commercial matter.* In the first category fall:

Ex parte Pierce, 125 Tex. Cr. 470, 75 S. W. 2nd 264 (1934).

New Rochelle v. *McCormick,* Westch. (N. Y.) L. J., June 11, 1935, page 997.

---

*Recent unreported cases of both kinds have been noted in the Bulletin of the International Juridical Association: *City of Newark* v. *Hill,* I, No. 12, page 2 (May, 1933); *People* v. *Toth,* II, No. 5, page 2 (Oct., 1933); *Cox* v. *Edgewater,* VI, page 41 (Oct., 1937); *City of Johnstown* v. *Spencer,* VI, page 74 (Dec., 1937); see also V, Bulletin of International Juridical Association, 147 (June, 1937).

See also

People v. *Armentrout*, 118 Cal. A. 761, 1 P. 2nd 556, 560 (1931).
City of Chicago v. *Schultz*, 341 Ill. 208, 173 N. E. 276 (1930).
People v. *Armstrong*, 73 Mich. 288, 41 N. W. 275 (1889).

In the second are:

Coughlin v. *Sullivan*, 100 N. J. L. 42, 126 Atl. 177 (1924).
People v. *Johnson*, 117 N. Y. Misc. 133 (1921).

This Court has recently expressed, in unmistakable language, the importance of the right of free expression of ideas.

deJonge v. *Oregon*, 299 U. S. 353.
Herndon v. *Lowry*, 301 U. S. 242.

The observations then made are equally applicable to pamphlets and leaflets. The American Civil Liberties Union is particularly concerned with these forms of expression because they are often the only forms open to minorities. The powerful can always be heard through the ordinary media of public expression. But the weak, especially if unpopular, are usually unable to have their views brought to public notice through the newspapers. It is often impossible for such groups to conduct public meetings. Private halls may be denied, public places barred. We have just seen this happen even to the relatively powerful C. I. O. in Jersey City. It has happened to other labor groups on numerous occasions in various parts of the country. And the radio is expensive and not always available.

Opportunities for expression of a particular point of view may exist, therefore, only through leaflet distribution. Such leaflets have, indeed, formed an important part in our history, from colonial days to the present. They are an indispensable method of voicing a point of view, the only effective newspaper for a special group. And, of course, their effectiveness depends upon the right to distribute them freely.

It may be urged, on behalf of the City, that distribution can be prevented if it becomes a "nuisance", either because it results in littering the streets or in annoyance to citizens. But the ordinance now under review is not restricted to cases of littering or to importunate efforts at distribution. Nor was there any evidence at the trial that would have justified conviction for either of such offenses. The testimony of the arresting officer was that the defendant had placed the pamphlet in the letter box of a Miss Smith and then offered it to her when she came to the door (R., 6). A single instance such as this could not possibly support a charge of littering or of annoyance.

Finally, it is a matter of common knowledge that ordinances such as the one involved in the case at bar are not generally enforced. It is only when some unpopular group attempts to distribute material that the ordinance is invoked. This may be difficult to establish so as to make applicable the principle of *Yick Wo* v. *Hopkins,* 118 U. S. 356. But the existence of discrimination in enforcement destroys any claim for the necessity for such type of ordinance.

It is, therefore, respectfully submitted that the ordinance, as here applied, is void.

FRANCIS BIDDLE,
OSMOND K. FRAENKEL,
LLOYD K. GARRISON,
Counsel for the
American Civil Liberties Union.

FILE COPY

Office - Supreme Court, U. S
FILED
JAN 27 1938
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 391.

ALMA LOVELL,
Appellant,

—against—

CITY OF GRIFFIN,
Appellee.

MOTION AND BRIEF ON BEHALF OF WORKERS' DEFENSE LEAGUE AS *AMICUS CURIAE.*

SAMUEL SLAFF,
Counsel for Workers' Defense League.

GEORGE SLAFF (of the New York Bar),
On the Brief.

TABLE OF CASES CITED:

PAGE

Barthet v. *City of New Orleans*, 24 Fed. 563..... 9

City of Summitt v. *Gramp* (Unreported—N. J. Sup. Ct., 1933)..... 8

Coughlin v. *Sullivan*, 100 N. J. L. 42, 126 Atl. 177.....9, 11

Ex parte Jackson, 96 U. S. 727..... 6

Ex parte Pierce, 75 S. W. 264..... 10

Gitlow v. *New York*, 268 U. S. 652..... 5

Grosjean v. *American Press Co.*, 297 U. S. 233.....5, 7, 12

Herndon v. *Lowry*, 301 U. S. 242..... 7

Kish, et al. v. *Meaney, et al.* (now pending—N. J. Sup. Ct.) 12

Lynch v. *Town of Northview*, 73 W. Va. 609, 81 S. E. 833 9

Matter of the Application of Nancy Cox, for a writ of Habeas Corpus, 60 N. J. L. J., 328..... 10

Near v. *Minnesota*, 283 U. S. 697..... 5

Palko v. *Connecticut*, 82 L. Ed. Adv. Ops. #5, P. 220.. 5

Peo. v. *Armstrong*, 73 Mich. 288, 41 N. W. 275..... 10

Peo. v. *Johnson*, 117 Misc. 133, 191 N. Y. S. 750.....10, 12

State v. *Conlon*, 65 Conn. 478, 33 Atl. 519..... 9

Town of State Center v. *Barenstein*, 66 Iowa 249, 23 N. W. 652..... 9

Yick Wo v. *Hopkins*, 118 U. S. 356..... 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 391.

ALMA LOVELL,
Appellant,

—against—

CITY OF GRIFFIN,
Appellee.

Motion for Leave to File Brief as Amicus Curiae.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the Workers' Defense League, an unincorporated association, has obtained the consent of all counsel of record to the filing of the accompanying brief and respectfully moves this Honorable Court for leave to file the same in this case as *amicus curiae.*

January 20th, 1938.

SAMUEL SLAFF,
Counsel for Workers' Defense League.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 391.

ALMA LOVELL,
Appellant,

—against—

CITY OF GRIFFIN,
Appellee.

BRIEF OF WORKERS' DEFENSE LEAGUE AS AMICUS CURIAE.

Statement of the Case.

The appellant was tried and convicted in the Recorder's Court of the City of Griffin, Georgia, for violation of the ordinance quoted below:

"ORDINANCE OF CITY OF GRIFFIN

"Be it ordained by the Board of Commissioners of the City of Griffin:

"Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance,

and punishable as an offense against the City of Griffin.

"Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance."

The judgment of conviction was affirmed by the Court of Appeals of Georgia. Its opinion appears at page 16 of the Record and is reported in 55 Ga. 609, 191 S. E. 152.

Interest of the Workers' Defense League.

Among the purposes of the Workers' Defense League is the protection of the rights of assembly, free speech and freedom of the press. It submits this brief as *amicus curiae* because of its opinion that today many municipal officials are attempting to so circumscribe and limit the rights of free speech and press through the medium of unconstitutional ordinances as to render those rights unavailable to any but powerful vested property interests. It is its opinion that this ordinance is unconstitutional on its face. The judgment and experience of the Workers' Defense League is that ordinances of the general type of the one under immediate consideration are mainly invoked against minorities and against the expression of views which offer the possibility, real or imaginary, of curtailment of special privileges.

Argument.

This Court has held that freedom of speech and freedom of the press are protected against state infringement by the Fourteenth Amendment.

Near v. *Minnesota,* 283 U. S. 697;
Gitlow v. *New York,* 268 U. S. 652;
Grosjean v. *American Press Co.,* 297 U. S. 233;
Palko v. *Connecticut,* 82 L. Ed. Adv. Ops. #5, P. 220.

In the last cited case, this Court said of freedom of thought and speech (p. 224):

> "Of that freedom one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom."

In every country in the world where a dictatorship exists there exists also a controlled press.* In stating that a basic element of any democracy is a free and untrammelled press which has the right to have its opinions and messages disseminated as widely as possible, we go no further than this Court itself has gone.

> "A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."
>
> *Grosjean* v. *American Press Co., supra,* 250.

We do not deem it necessary to dwell at any length upon the fact that the "press" embraces within its meaning much more than the regularly constituted daily or weekly newspapers or magazines. Many of the greatest struggles for freedom and the rights of man have been fought and won in England and America through the pamphleteering activities of such people as John Milton, Edmund Burke, Thomas

* Report of the Dean of the Graduate School of Journalism of Columbia University, for period ending June 30, 1937.

Paine, Benjamin Franklin, Samuel Adams, William Lloyd Garrison, and hosts of others. Nor can freedom of the press be restricted to the narrow meaning of merely liberty to print. The phrase and the concept are illusory unless they encompass freedom to *communicate* ideas, whether one's own or another's. It must and does include not only the right to write and print, but to publish and circulate as well.

Ex parte Jackson, 96 U. S. 727, 733.

The issue involved in this case is far broader than the question of religious freedom. Within the past decade ordinances of this sort have spotted the country. This one, and many others as well, prohibit or restrict the distribution in public places of printed matter and involve a conscious or unconscious fascist throttling of a free press. Whatever might be said legalistically to justify a restriction on the distribution of commercial advertising matter (and we take no position thereon at this time since it is not germane to the issue—the ordinance being so much broader in its terms) there can be no justification under the guise of the "police power" of submitting the control of the press to the caprice or whim of any administrative official of any city.

Although a City Council would hardly dare include such an explicit provision, the power of the City Manager of Griffin to exercise censorship of the press is implicit in this ordinance. Prior to any issuance of a permit by the City Manager, he may well demand that the purpose and the nature of the literature sought to be distributed be disclosed to him. If the distributor refuses, it requires but little appreciation of practical political administration to

realize that his opportunity of obtaining a permit is nil. If he consents and discloses, there is placed in the hands of the City Manager the power to refuse a permit in the event the social, economic, religious or political views expressed therein fail to meet with his approval. There is thus placed in his control as effective a means of censorship as any which have characterized the worst periods of English history.

> "As early as 1644, John Milton, in an 'Appeal for the Liberty of Unlicensed Printing', assailed an act of Parliament which had just been passed providing for censorship of the press previous to publication. He vigorously defended the right of every man to make public his honest views 'without previous censure'; and declared the impossibility of finding any man base enough to accept the office of censor and at the same time good enough to be allowed to perform its duties."
>
> *Grosjean* v. *American Press Co., supra,* 245.

Moreover, the ordinance in question sets up no standards under which the City Manager must issue a permit. It thus falls within the condemnation of this Court which said in *Herndon* v. *Lowry,* 301 U. S. 242, 264:

> "So vague and indeterminate are the boundaries thus set to the freedom of speech . . . that the law necessarily violates the guaranties of liberty embodied in the Fourteenth Amendment."

This Court, in *Yick Wo* v. *Hopkins,* 118 U. S. 356, quoted with approval at pages 372, *et seq.,* a statement from a Maryland case, which said:

> "It lays down no *rules* by which its *impartial execution* can be secured, or partiality and oppression prevented . . .; and, when we remember that this action or non-action may proceed from

> enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who gives to the subject a moment's consideration. In fact an ordinance which clothes a single individual with such power hardly falls within the *domain of law,* and we are constrained to pronounce it inoperative and void."

So too, here the ordinance "commits to the unrestrained will of a single public official" the right to grant a person permission to distribute or to bar such person completely from an opportunity of exercising one phase of his right of freedom of the press. So too, the ordinance "lays down no rules by which its impartial execution can be secured or partiality and oppression prevented". So too, "when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who gives to the subject a moment's consideration". And so too, here the Griffin ordinance which "clothes a single individual with such power hardly falls within the domain of law".

In the unreported case of *City of Summitt* v. *Gramp,* Mr. Justice Case of the New Jersey Supreme Court, setting aside a conviction, said:

> "By the terms of the ordinance the permit is

> to issue only upon the written approval of the Chief of Police, who is given absolute discretion in granting or withholding his approval without any determining factors other than his own impulses. The reservation in an ordinance of discretionary powers to a public officer to give to one and withhold from another the privilege of violating the ordinance is condemned by our cases. . . . It is unreasonable that a Chief of Police, with no rule of determination except his own wishes, should determine who is and who is not to distribute advertisements."

Supporting the same principle are:

> *Lynch* v. *Town of Northview,* 73 W. Va. 609, 81 S. E. 833;
> *Barthet* v. *City of New Orleans,* 24 Fed. 563;
> *State* v. *Conlon,* 65 Conn. 478, 33 Atl. 519;
> *Town of State Center* v. *Barenstein,* 66 Iowa 249, 23 N. W. 652.

A few State Courts have, on occasion, upheld ordinances restricting the distribution of literature in public places on the grounds that such laws were a valid exercise of the police power, *i. e.,* to prevent public danger to pedestrians and property as a result of horses being frightened by swirling handbills and to prevent street littering. Neither of these grounds has any validity as an attempted justification for stifling a free press. The automobile has virtually replaced the horse—and literature other than purely commercial advertising matter does not have a tendency to litter.

> "It cannot be presumed, in the absence of evidence, that the recipients of such pamphlets would throw them away."
>
> *Coughlin* v. *Sullivan,* 100 N. J. L. 42, 126 Atl. 177.

But even if it be assumed that the distribution of the literature in the instant case or other literature of a wider or narrower appeal did in fact have a tendency to and did result in street littering, such a tendency or such a result can not support a law which attempts to root out a fundamental right.

> *Peo.* v. *Johnson,* 117 Misc. 133, 191 N. Y. S. 750, 751.

See also:

> *Ex parte Pierce,* 75 S. W. 264.

"Street littering" can very readily be made an offense, properly punishable, by any municipality which seriously considers that the distribution of literature presents the possibility of such a result. But beyond that and to the extreme presented herein no municipality, whether honestly motivated or otherwise, should be permitted to go.

> "What direction or restraint is required for the public good in the mere act of giving away an advertising card or handbill? This part of the ordinance is not aimed at the littering up of the streets, or the frightening of horses, *but the offense is made complete in itself by the mere act of distributing or giving away of these enumerated articles* . . . . This ordinance not only does not come within the power granted by the charter, but it is also unreasonable and unwarranted." (Italics ours.)
>
> *Peo.* v. *Armstrong,* 73 Mich. 288, 41 N. W. 275, 277.

Mr. Justice Bodine of the New Jersey Supreme Court in a recent case, *Matter of the Application of Nancy Cox for a Writ of Habeas Corpus,* 60 N. J.

L. J. 328, entered an order finding a handbill ordinance of the Borough of Edgewater unconstitutional, the State and Federal constitutional issues having been the sole questions raised on the habeas corpus. The ordinance there required a permit from the Police Department. He stated:

> ". . . I think no one would contend that it (the federal government) could preclude a citizen from distributing, by mail, historical documents or a contemporary comment upon matters of public interest. Neither may a borough, in an attempt to keep its streets clean and unlittered, forbid a citizen from handing to another citizen a document of historic and social interest."

See also:

> *Coughlin* v. *Sullivan,* 100 N. J. L. 42, 126 Atl. 177.

We cannot ignore the economic and political realities inherent in this ordinance and others of a similar nature. These ordinances—and query whether they are not in the main designed for that very purpose—permit municipal officials to stifle labor organizational activities and attacks on inept and corrupt administration of public affairs while at the same time offering lip service to constitutional and statutory rights. In 1924 an ordinance of this general type was used by the City of Jersey City, New Jersey, in an attempt to suppress a criticism of the municipal administration. See *Coughlin* v. *Sullivan, supra.* The very same ordinance there involved and repudiated by Justice Minturn has never been repealed and is today being used by Jersey City, under the guidance of Mayor Frank Hague, to prevent organizational activity of labor unions affiliated with the Committee

for Industrial Organization. (See Record before New Jersey Supreme Court in matter now pending, *Joseph Kish, et al.* v. *Thomas F. Meaney, et al., On Applications for Writs of Certiorari.*)

When the right of any individual to criticize a municipal administration, or to attempt to secure the cooperation and collective activity of others in a lawful labor movement, can be impeded or thwarted under the flimsy pretext of an anti-littering ordinance, we submit that the matter has become one of national importance. The "handbill ordinance phase" of the problem of freedom of speech and press is one without exact federal precedent for this Court has never expressed itself on the issue of these particular ordinances. The problem is a significant one and grows more important daily.

A striking attack on freedom of the press involving daily newspapers was suppressed by this Court in *Grosjean* v. *American Press Co., supra.* The Griffin type of ordinance, although occasionally encompassing newspapers within its scope, is in practical operation rarely if ever used against them; rather, it is used frequently to oppress humble people when their views and policies offend municipal administrations. They require the protection of this Court of their constitutionally guaranteed rights when they use "possibly the only means available by the distribution of circulars and pamphlets to the public". *People* v. *Johnson, supra.*

SAMUEL SLAFF,
Counsel for Workers' Defense League.

GEORGE SLAFF (of the New York Bar),
On the Brief.

SUPREME COURT OF THE UNITED STATES.

No. 391.—October Term, 1937.

Alma Lovell, Appellant,
vs.
The City of Griffin.

Appeal from the Court of Appeals of the State of Georgia.

[March 28, 1938.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellant, Alma Lovell, was convicted in the Recorder's Court of the City of Griffin, Georgia, of the violation of a city ordinance and was sentenced to imprisonment for fifty days in default of the payment of a fine of fifty dollars. The Superior Court of the county refused sanction of a petition for review; the Court of Appeals affirmed the judgment of the Superior Court (55 Ga. App. 609); and the Supreme Court of the State denied an application for certiorari. The case comes here on appeal.

The ordinance in question is as follows:

"Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin.

"Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance".

The violation, which is not denied, consisted of the distribution without the required permission of a pamphlet and magazine in the nature of religious tracts, setting forth the gospel of the "Kingdom of Jehovah". Appellant did not apply for a permit, as she regarded herself as sent "by Jehovah to do His work" and that such an application would have been "an act of disobedience to His commandment".

Upon the trial, with permission of the court, appellant demurred to the charge and moved to dismiss it upon a number of grounds, among which was the contention that the ordinance violated the Fourteenth Amendment of the Constitution of the United States in abridging "the freedom of the press" and prohibiting "the free exercise of petitioner's religion". This contention was thus expressed:

"Because said ordinance is contrary to and in violation of the first amendment to the Constitution of the United States, which reads:

'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.'

"Said ordinance is also contrary to and in violation of the fourteenth amendment to the Constitution of the United States, which had the effect of making the said first amendment applicable to the States, and which reads:

'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws'.

"Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the City Manager and thus abridges the freedom of the press, contrary to the provisions of said quoted amendments.

"Said ordinance also prohibits the free exercise of petitioner's religion and the practice thereof by prohibiting the distribution of literature about petitioner's religion in violation of the terms of said quoted amendments".

The Court of Appeals, overruling these objections, sustained the constitutional validity of the ordinance, saying—

"The ordinance is not unconstitutional because it abridges the freedom of the press or prohibits the distribution of literature about the petitioner's religion, in violation of the fourteenth amendment to the constitution of the United States".

While in a separate paragraph of its opinion the court said that the charge that the ordinance was void because it violated a desig-

nated provision of the state or federal constitution without stating wherein there was such a violation, was too indefinite to present a constitutional question, we think that this statement must have referred to other grounds of demurrer and not to the objection above quoted which was sufficiently specific and was definitely ruled upon. The contention as to restraint "upon the free exercise of religion", with respect to the same ordinance, was presented in the case of *Coleman* v. *City of Griffin*, 55 Ga. App. 123, and the appeal was dismissed (October 11, 1937) for want of a substantial federal question. *Reynolds* v. *United States*, 98 U. S. 145, 166, 167; *Davis* v. *Beason*, 133 U. S. 333, 342, 343. But, in the *Coleman* case, the Court did not deal with the question of freedom of speech and of the press as it had not been properly presented. We think that this question was adequately presented and was decided in the instant case. Whether it was so presented and was decided is itself a federal question. *Carter* v. *Texas*, 177 U. S. 442, 447; *Ward* v. *Love County*, 253 U. S. 17, 22; *First National Bank* v. *Anderson*, 269 U. S. 341, 346; *Schuylkill Trust Co.* v. *Pennsylvania*, 296 U. S. 113, 121. This Court has jurisdiction.

Freedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action. *Gitlow* v. *New York*, 268 U. S. 652, 666; *Stromberg* v. *California*, 283 U. S. 359, 368; *Near* v. *Minnesota*, 283 U. S 697, 707; *Grosjean* v. *American Press Company*, 297 U. S. 233, 244; *De Jonge* v. *Oregon*, 299 U. S. 353, 364. See, also, *Palko* v. *Connecticut*, decided December 6, 1937. It is also well settled that municipal ordinances adopted under state authority constitute state action and are within the prohibition of the amendment. *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20; *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U. S. 278; *Cuyahoga Power Company* v. *Akron*, 240 U. S. 462.

The ordinance in its broad sweep prohibits the distribution of "circulars, handbooks, advertising, or literature of any kind". It manifestly applies to pamphlets, magazines and periodicals. The evidence against appellant was that she distributed a certain pamphlet and a magazine called the "Golden Age". Whether in actual administration the ordinance is applied, as apparently it

could be, to newspapers does not appear. The City Manager testified that "every one applies to me for a license to distribute literature in this City. None of these people (including defendant) secured a permit from me to distribute literature in the City of Griffin". The ordinance is not limited to "literature" that is obscene or offensive to public morals or that advocates unlawful conduct. There is no suggestion that the pamphlet and magazine distributed in the instant case were of that character. The ordinance embraces "literature" in the widest sense.

The ordinance is comprehensive with respect to the method of distribution. It covers every sort of circulation "either by hand or otherwise". There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets. The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the City Manager.

We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his "Appeal for the Liberty of Unlicensed Printing". And the liberty of the press became initially a right to publish "*without* a license what formerly could be published only *with* one."[1] While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. See *Patterson* v. *Colorado,* 205 U. S. 454, 462; *Near* v. *Minnesota,* 283 U. S. 697, 713-716; *Grosjean* v. *American Press Company,* 297 U. S. 233, 245, 246. Legislation of the type of the ordinance in question would restore the system of license and censorship in its baldest form.

The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the

[1] See Wickwar, "The Struggle for the Freedom of the Press", p. 15.

pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to the vital importance of protecting this essential liberty from every sort of infringement need not be repeated. *Near* v. *Minnesota, supra; Grosjean* v. *American Press Company, supra; De Jonge* v. *Oregon, supra.*[2]

The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value". *Ex parte Jackson,* 96 U. S. 727, 733. The license tax in *Grosjean* v. *American Press Company, supra,* was held invalid because of its direct tendency to restrict circulation.

As the ordinance is void on its face, it was not necessary for appellant to seek a permit under it. She was entitled to contest its validity in answer to the charge against her. *Smith* v. *Cahoon,* 283 U. S. 553, 562.

The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice CARDOZO took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

[2] See also, Starr *v.* Brush, 185 App. Div. (N. Y.) 261; Dearborn Publishing Company *v.* Fitzgerald, 271 Fed. 479; Ex parte Campbell, 221 Pac. 952; Coughlin *v.* Sullivan, 100 N. J. L. 12. Compare People *v.* Armstrong, 73 Mich. 288; City of Chicago *v.* Schultz, 341 Ill. 208; People *v.* Armentrout, 118 Cal. App. 761.